

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MILOS LEUBNER,

Plaintiff,

No. 2:08-cv-0853 GEB JFM PS

vs.

COUNTY OF SAN JOAQUIN,
et al.,

Defendants.

ORDER

_____ /

Plaintiff is proceeding pro se. By order filed November 12, 2009, defendant Egi was directed to show cause why default should not be entered against him for his failure to timely respond to service of process in this action. On December 14, 2009, counsel for defendant County of San Joaquin responded to the order to show cause. It appears defendant Egi was not properly served with process because at the time the U.S. Marshal left process with Clarice Howarth, CPS receptionist at Child Protective Services, Mr. Egi had not been working for the County for over a year. Ms. Howarth was not authorized to accept service on Mr. Egi's behalf, and substituted service was not accomplished as required by California law. Cal. Code Civ. Proc. § 415.20(b).

Accordingly, the court will discharge the order to show cause. Plaintiff will be required to provide an alternative address for service of process on defendant Egi. Plaintiff may

1 wish to obtain this information from other defendants through discovery. The court will provide
2 plaintiff with the appropriate service forms.

3 IT IS HEREBY ORDERED that:

4 1. The November 12, 2009 order to show cause is discharged;

5 2. Plaintiff shall obtain one USM-285 form for defendant Egi, one summons and
6 an instruction sheet. Blank USM-285 forms, blank summons, and instruction sheets are
7 available in the office of the Clerk of the Court.

8 3. Within ninety days from the date of this order, plaintiff shall complete the
9 attached Notice of Submission of Documents and submit the completed Notice to the court with
10 the following documents:

11 a. One completed summons for defendant Egi;

12 b. One completed USM-285 form for defendant Egi and

13 c. Two copies of the endorsed third amended complaint filed July 23,
14 2009.

15 3. Plaintiff need not attempt service on defendant and need not request waiver of
16 service. Upon receipt of the above-described documents, the court will direct the United States
17 Marshal to serve the above-named defendant pursuant to Federal Rule of Civil Procedure 4
18 without prepayment of costs.

19 4. Failure to comply with this order may result in a recommendation that
20 defendant Egi be dismissed from this action.

21 DATED: December 15, 2009.

22
23 
24 UNITED STATES MAGISTRATE JUDGE

25 /001; leubner.egi