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

RANDALL STEVENS,

Plaintiff,

No. CIV S-09-0247 FCD GGH PS

vs.

CHERYL KARY, et al.,

ORDER AND ORDER TO SHOW CAUSE

Defendants.

_____ /

Motions to dismiss filed by defendants Kary and Sun Life Assurance Company presently are calendared for hearing on September 17, 2009. Having reviewed the record, the court has determined that oral argument would not be of material assistance in determining the pending motions. Accordingly, the court will not entertain oral argument, and will determine the motion on the record, including the briefing in support of and in opposition to the pending motion. See E.D. Cal. L.R. 78-230(h).

Defendant Kary’s motion refers to a pending probate proceeding in state court. It has been well established that probate matters are not within the jurisdiction of the federal court. Marshall v. Marshall, 547 U.S. 293, 308 (2006) (“Decisions of this Court have recognized a ‘probate exception,’ kin to the domestic relations exception, to otherwise proper federal jurisdiction.”); Markham v. Allen, 326 U.S. 490, 494 (1946) (noting that federal courts cannot

1 interfere with probate proceedings or assume control of property in the custody of the state
2 court); Sutton v. English, 246 U.S. 199, 205 (1918) (observing that it is not within the
3 jurisdiction of the federal courts to set aside a will or the probate thereof); Waterman v. Canal-
4 Louisiana Bank & Trust Co., 215 U.S. 33, 45 (1909) (holding that the jurisdiction of the probate
5 court may not be interfered with concerning the probate administration of the estate). Therefore,
6 plaintiff will be ordered to show cause why his action should not be stayed in light of the pending
7 state court action.

8 Accordingly, IT IS ORDERED that:

- 9 1. The September 17, 2009 hearing on the motions to dismiss filed by defendants
10 Sun Life and Kary, is vacated;
- 11 2. The motions are submitted on the record; and
- 12 3. Plaintiff shall show cause in writing within twenty days of this order why this
13 action should not be stayed in light of the pending state court litigation.

14 DATED: September 15, 2009

15 /s/ Gregory G. Hollows

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17 GREGORY G. HOLLOWS
18 U. S. MAGISTRATE JUDGE

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