

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

KARLUK M. MAYWEATHERS,

Plaintiff,

No. 2:09-cv-3284 LKK KJN P

vs.

GARY SWARTHOUT, et al.,

Defendants.

ORDER

_____ /

On February 28, 2012, this court vacated the Pretrial Conference scheduled in this action for March 9, 2012, and the deadlines for filing pretrial statements. (Dkt. No. 48.) As the undersigned explained therein, “plaintiff failed to file his separate pretrial statement, which was due on February 10, 2012. This is the second time that plaintiff missed his pretrial statement deadline; when he missed the initial deadline of December 16, 2011, defendants filed an ex parte application to extend all deadlines, which the court granted by order filed January 5, 2012. However, plaintiff has not since communicated with the court.” (Id. at 1.) The court directed plaintiff to timely respond to defendants’ pending motion to dismiss, which is premised on plaintiff’s failure to prosecute this action. (Id. at 3.) The court informed plaintiff that failure to file an opposition could result in dismissal of this action. (See Dkt. No. 48 at 2, quoting Fed. R. Civ. P. 41(b), and Local Rule 110.) The deadline for timely opposing defendants’ motion to

1 dismiss (Dkt. No. 47), was March 16, 2012 (see Local Rule 230(l)); however, plaintiff has not
2 responded, or otherwise communicated with the court.

3 Plaintiff's last communication with the court was December 20, 2011, when he
4 filed a Notice of Change of Address, emphasizing that his mail needed to be sent to the "west
5 (8103)," rather than "east (8101)" wing of the California Men's Colony. (Dkt. No. 43.) Review
6 of the docket indicates that, prior to the court's receipt of this notice, the court's Further
7 Scheduling Order was served and re-served on plaintiff in the "east (8101)" wing. (See Dkt. No.
8 42 and subsequent service notations.) Nevertheless, the order was not returned to this court,
9 indicating that it had been delivered to plaintiff. Moreover, this court's orders filed January 5,
10 2012, and February 28, 2012, were properly served on plaintiff in the "west (8103)" wing. (See
11 Dkt. Nos. 45 and 48, service notations.) However, defendants' motions filed January 3, 2012,
12 and February 24, 2012, were improperly served on plaintiff in the "east (8101)" wing. (See Dkt.
13 No. 44 at 5; Dkt. No. 46 at 5; Dkt. No. 47 at 7.)

14 In an abundance of caution, the court will accord plaintiff one additional
15 opportunity to appear in this action.

16 Accordingly, IT IS HEREBY ORDERED that:

17 1. The dates for trial (July 24, 2012) and the trial confirmation hearing (April 23,
18 2012), are hereby VACATED pending further order of this court.

19 2. The Clerk of Court is directed to send plaintiff one copy each of the orders
20 filed November 2, 2011 (Dkt. No. 42) (note that all dates contained therein are now VACATED);
21 January 5, 2012 (Dkt. No. 45); and February 28, 2012 (Dkt. No. 48). In addition, the Clerk of
22 Court is directed to send plaintiff one copy each of defendants' motion filed January 3, 2012
23 (Dkt. No. 44); and two motions filed February 24, 2012 (Dkt. Nos. 46 and 47.)

24 3. Plaintiff shall, within twenty-one (21) days after service of this order, file and
25 serve a statement explaining his recent lack of participation in this case.

26 4. In addition, plaintiff shall, within twenty-one (21) days after service of this


1 order, file and serve an opposition to defendants' motion to dismiss this action (Dkt. No. 47), or a
2 request to voluntarily dismiss this action.

3 5. Failure of plaintiff to fully and timely respond to this order shall result in a
4 recommendation to the district judge that this action be dismissed.

5 SO ORDERED.

6 DATED: March 23, 2012

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

mayw3284.re.srv.