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

DERRICK RICHARDS-WHITE,

Plaintiff,

No. CIV S-10-0292 GEB EFB PS

vs.

JACK LEMENDOLA,

Defendant.

ORDER AND
ORDER TO SHOW CAUSE

_____ /
This case, in which plaintiff is proceeding pro se, is before the undersigned pursuant to Eastern District of California Local Rule 302(c)(21). See 28 U.S.C. § 636(b)(1). On February 4, 2010, plaintiff filed a complaint and a motion to proceed in this action *in forma pauperis*. Dckt. Nos. 1, 2. Plaintiff's motion to proceed *in forma pauperis* demonstrates that plaintiff is unable to prepay fees and costs or give security thereof. Accordingly, the request to proceed *in forma pauperis* is granted.¹ 28 U.S.C. § 1915(a).

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¹ Pursuant to 28 U.S.C. § 1915(e)(2), the court is directed to dismiss a case filed pursuant to the *in forma pauperis* statute if, at any time, it determines that the allegation of poverty is untrue, or if the action is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against an immune defendant. In light of defendant's pending motion to dismiss and plaintiff's failure to respond thereto, the court reserves decision on these issues at this time.

1 On February 25, 2010, defendant filed a motion to dismiss plaintiff's complaint for lack
2 of subject matter jurisdiction. Dckt. No. 4. Defendant noticed the motion for hearing on April
3 14, 2010. *Id.* Court records reflect that plaintiff has filed neither an opposition nor a statement
4 of non-opposition to the motion. Local Rule 230(c) provides that opposition to the granting of a
5 motion, or a statement of non-opposition thereto, must be served upon the moving party, and
6 filed with this court, no later than fourteen days preceding the noticed hearing date or, in this
7 instance, by March 31, 2010. Local Rule 230(c) further provides that "[n]o party will be entitled
8 to be heard in opposition to a motion at oral arguments if opposition to the motion has not been
9 timely filed by that party."

10 Local Rule 183, governing persons appearing in pro se, provides that failure to comply
11 with the Federal Rules of Civil Procedure and Local Rules may be ground for dismissal,
12 judgment by default, or other appropriate sanction. Local Rule 110 provides that failure to
13 comply with the Local Rules "may be grounds for imposition by the Court of any and all
14 sanctions authorized by statute or Rule or within the inherent power of the Court." *See also*
15 *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) ("Failure to follow a district court's local rules
16 is a proper ground for dismissal."); *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987) (noting that
17 pro se litigants are bound by the rules of procedure, even though pleadings are liberally
18 construed in their favor).

19 Accordingly, good cause appearing, IT IS HEREBY ORDERED that:

- 20 1. Plaintiff's motion to proceed *in forma pauperis*, Dckt. No. 2, is granted.
- 21 2. The hearing on defendant's motion to dismiss is continued to May 12, 2010 at 10:00
22 a.m. in Courtroom No. 24.
- 23 3. Plaintiff shall show cause, in writing, no later than April 28, 2010, why sanctions
24 should not be imposed for failure to timely file an opposition or a statement of non-opposition to
25 the pending motion.

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1 4. Plaintiff shall file an opposition to the motion, or a statement of non-opposition
2 thereto, no later than April 28, 2010. Failure of plaintiff to file an opposition will be deemed a
3 statement of non-opposition to the pending motion, and may result in a recommendation that this
4 action be dismissed for lack of prosecution. *See* Fed. R. Civ. P. 41(b).

5 5. Defendant may file a reply to plaintiff's opposition, if any, on or before May 5, 2010.

6 SO ORDERED.

7 DATED: April 8, 2010.

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9 EDMUND F. BRENNAN
10 UNITED STATES MAGISTRATE JUDGE
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