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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DANIEL THOMAS HARVEY,
Plaintiff,
v.
ANDREW EISSINGER, CHARLES
DUKE, SHANNON LANEY, and JAKE
HERMINGHAUS,
Defendants.

No. 2:10-cv-1653-KJM-EFB PS

ORDER

On November 27, 2013, defendants filed a motion to dismiss the fifth amended complaint for failure to state a claim.¹ ECF No. 97. Defendants noticed the hearing on that motion for January 8, 2014. *Id.* Pursuant to this court’s local rules, plaintiff was required to file an opposition or a statement of non-opposition to the motion by December 26, 2013. *See* E.D. Cal. L.R. 230(c); Fed. R. Civ. P. 6(a).

Plaintiff failed to timely file an opposition or statement of non-opposition. Therefore, on December 30, 2013, plaintiff was ordered to show cause, in writing, no later than January 15, 2014, why sanctions should not be imposed for failure to timely file an opposition or a statement of non-opposition to the pending motion. ECF No. 99. The order also continued the hearing on

¹ This case, in which plaintiff is proceeding pro se, is before the undersigned pursuant to 28 U.S.C. § 636(b)(1) and Eastern District of California Local Rule 302(c)(21).

1 defendants' motion to dismiss to January 29, 2014, and ordered plaintiff to file an opposition or
2 statement of non-opposition to the pending motion no later than January 15, 2014. *Id.* As of the
3 date of this order, plaintiff has not filed an opposition or statement of non-opposition. However,
4 court records reflect that the Clerk of the Court failed to serve plaintiff with the December 30
5 order to show cause. That order shall be served on plaintiff forthwith. Further, plaintiff will be
6 given additional time to file an opposition or statement of non-opposition and to respond to the
7 December 30, 2013 order to show cause.

8 Accordingly, it is hereby ORDERED that:

9 1. The Clerk is directed to serve plaintiff with a copy of the court's December 30, 2013
10 order to show cause, ECF No. 99.

11 2. The court's December 30, 2013 order to show cause is modified as follows:

12 a. The hearing on defendants' motion to dismiss (ECF No. 97) is continued to
13 February 26, 2014.

14 b. Plaintiff shall show cause, in writing, no later than February 12, 2014, why
15 sanctions should not be imposed for failure to timely file an opposition or a statement of non-
16 opposition to the pending motion.

17 c. Plaintiff shall file an opposition to the motion, or a statement of non-opposition
18 thereto, no later than February 12, 2014.

19 d. Failure of plaintiff to file an opposition to the motion will be deemed a
20 statement of non-opposition thereto, and may result in a recommendation that this action be
21 dismissed for lack of prosecution and/or for failure to comply with court orders and this court's
22 Local Rules. *See* Fed. R. Civ. P. 41(b).

23 e. Defendants may file a reply to plaintiff's opposition, if any, on or before
24 February 19, 2014.

25 DATED: January 17, 2014.

26 
EDMUND F. BRENNAN
27 UNITED STATES MAGISTRATE JUDGE
28