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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHN PHILIP MONCRIEF,

Plaintiff,

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
REHABILITATION, et al.,

Defendants.

No. 2:12-cv-00414 MCE AC P

ORDER

On March 26, 2015, the court issued an order to show cause why plaintiff’s counsel should not be sanctioned \$500.00 for failing to respond to defendants’ motion to dismiss and appear at the March 25, 2015 hearing. ECF No. 66. They were also directed to show cause why the failure to file an opposition should not be deemed a statement of non-opposition. Id. Counsel has submitted a declaration in which he avers that his failure to respond to the motion and appear at the hearing were the result of a prolonged, serious illness. ECF No. 67 at ¶¶ 3-5. He also states that if given the opportunity, he would file a statement of non-opposition regarding the claims against the CDCR, but would oppose the motion to dismiss the intentional infliction of emotional distress claim. Id. at ¶ 6.

While the court is sympathetic to Mr. Frucht’s health issues, he is neither a solo practitioner nor the only attorney of record for plaintiff. There is no explanation as to why co-

1 counsel or another attorney at the firm was not covering Mr. Frucht's cases during his incapacity.
2 Therefore, plaintiff's counsel of record, Kenneth N. Frucht and Lyndon Y. Chee, will be jointly
3 sanctioned \$250.00, payable to the Clerk of the Court, for failing to respond to defendants'
4 motion to dismiss and appear at the March 25, 2015 hearing. Additionally, the court will consider
5 the motion to dismiss the claims against defendant CDCR unopposed. However, the court will
6 permit plaintiff an opportunity to oppose the motion to dismiss as it relates to the claims for
7 intentional infliction of emotional distress.

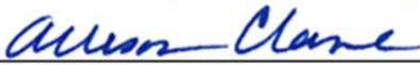
8 Accordingly, IT IS HEREBY ORDERED that:

9 1. Plaintiff's counsel of record, Kenneth N. Frucht and Lyndon Y. Chee, are jointly
10 sanctioned \$250.00 payable to the Clerk of the Court within ten days of this order. This sanction
11 is personal to the attorneys and is not to be transmitted to the client by way of a charge of
12 attorney's fees and/or costs.

13 2. Defendants' motion to dismiss with respect to the claims against defendant CDCR is
14 deemed unopposed.

15 3. Plaintiff shall file an opposition to the portion of the motion to dismiss that relates to
16 the claims for intentional infliction of emotional distress within thirty days of this order. A
17 decision whether to re-set the hearing on the motion to dismiss will be made upon receipt of
18 plaintiff's opposition.

19 DATED: April 3, 2015

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21 ALLISON CLAIRE
22 UNITED STATES MAGISTRATE JUDGE
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