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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CLARENCE A. GIPBSIN,
Plaintiff,
v.
SCOTT KERNAN, et al.,
Defendants.

No. 2:12-cv-0556 GEB DAD P

ORDER

Plaintiff is a state prisoner proceeding pro se and in forma pauperis. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983. Pending before the court are several of plaintiff's motions. Below, the court will address each motion in turn.

First, plaintiff has filed a motion to compel defendants to produce the correct name and address for defendant R. Gamez, Associate Chief Deputy Warden at High Desert State Prison at the time of the events alleged in plaintiff's complaint. On the same day that plaintiff filed his motion to compel, he also filed a USM-285 form for defendant Gamez and the other necessary service documents as previously ordered by this court. Based on the information plaintiff provided on the form USM-285 he submitted, this court ordered the United States Marshal to attempt service of defendant Gamez. Several months have passed since the court issued its service order. Accordingly, the court recently contacted the United States Marshal and learned that if the Marshal is unable to obtain a waiver of service from the California Department of

1 Corrections and Rehabilitation in the immediate future, the Marshal will pursue personal service
2 with respect to this defendant. Under these circumstances, the court will deny plaintiff's motion
3 to compel without prejudice. If the United States Marshal is unable to effect service on defendant
4 R. Gamez and returns a waiver of service unexecuted, plaintiff may use the discovery process
5 and/or renew his motion to compel at that time to determine this defendant's full name and
6 whereabouts.

7 Plaintiff has also filed two motions for entry of default against defendants. These motions
8 are without merit. Contrary to plaintiff's argument, all of the defendants who had been properly
9 served at the time plaintiff filed his motions for entry of default have timely responded by filing a
10 motion to dismiss plaintiff's complaint pursuant to Federal Rule of Civil Procedure 12(b)(6).
11 (Doc. Nos. 84, 85, 88 & 93) In this regard, the defendants have not "failed to plead or otherwise
12 defend." Fed. R. Civ. P. 55(a). Accordingly, the court will deny plaintiff's motions for entry of
13 default.

14 Next, plaintiff has filed a motion for a status conference. Plaintiff is advised that this
15 court typically does not hold status conferences in cases where a prisoner is proceeding pro se.
16 See L.R. 240(c)(8). In terms of the status of this action, plaintiff is advised that once service of
17 process is complete, the court will address defendants' pending motions to dismiss. If plaintiff's
18 complaint survives the motions to dismiss, defendants will be required to file an answer to his
19 complaint, and thereafter the court will issue a discovery and scheduling order for this matter. At
20 this time, no status conference is warranted. Accordingly, the court will deny plaintiff's motion
21 for a status conference.

22 Finally, plaintiff has filed a motion for summary judgment. Upon review of plaintiff's
23 motion, the court observes that it is defective because it does not comply with Rule 56 of the
24 Federal Rules of Civil Procedure or Local Rule 260(a). Rule 56(c)(1) requires a party to support
25 his or her factual position by:

26 citing to particular parts of materials in the record, including
27 depositions, documents, electronically stored information, affidavits
28 or declarations, stipulations (including those made for purposes of
the motion only), admissions, interrogatory answers, or other
materials.

1 Fed. R. Civ. P. 56(c)(1).

2 Similarly, Local Rule 260(a) requires that a motion for summary judgment

3 be accompanied by a “Statement of Undisputed Facts” that shall
4 enumerate discretely each of the specific material facts relied upon
5 in support of the motion and cite the particular portions of any
6 pleading, affidavit, deposition, interrogatory answer, admission, or
7 other document relied upon to establish that fact.

8 L.R. 260(a).

9 In this case, plaintiff has not cited to specific parts of the record or evidence submitted in
10 support of his purported statement of undisputed or stipulated facts. In addition, in lieu of
11 submitting an affidavit in support of his motion for summary judgment, plaintiff has submitted a
12 copy of his second amended complaint with a cover sheet declaring that all of the statements
13 made in his complaint are true and correct. Plaintiff is advised that any affidavit he submits in
14 support of a motion for summary judgment in the future must be based on “personal knowledge,
15 set out facts that would be admissible in evidence, and show that the affiant or declarant is
16 competent to testify on the matters stated.” Fed. R. Civ. P. 56(c)(4). Any such affidavit may not
17 be based purely on his belief. See Schroeder v. McDonald, 55 F.3d 454, 460 (9th Cir. 1995).
18 Finally, because plaintiff will bear the burden of proof at trial, in order to prevail on a motion for
19 summary judgment in his favor plaintiff must affirmatively demonstrate that based upon the
20 undisputed facts no reasonable trier of fact could find other than for him on the claim in question.
21 See Soremekun v. Thrifty Payless, Inc., 509 F.3d 978, 984 (9th Cir. 2007). It is not enough that
22 the allegations of plaintiff’s complaint appear to state a cognizable claim for relief against
23 defendants for their involvement in the delay of his mental health treatment.

24 Under these circumstances, the court will deny plaintiff’s motion for summary judgment
25 without prejudice to renewal after this court issues a discovery and scheduling order. Any such
26 renewed motion must lay out each separate statement of undisputed fact and cite to corresponding

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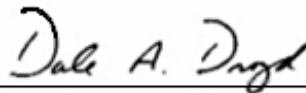
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1 evidence attached to the motion, which plaintiff believes demonstrates the absence of a genuine
2 issue of material fact.¹

3 Accordingly, IT IS HEREBY ORDERED that:

- 4 1. Plaintiff's motion to compel (Doc. No. 81) is denied without prejudice;
- 5 2. Plaintiff's motions for entry of default against defendants (Doc. Nos. 92 & 95) are
6 denied;
- 7 3. Plaintiff's motion for a status conference (Doc. No. 99) is denied;
- 8 4. Plaintiff's motion for summary judgment (Doc. No. 100) is denied without prejudice to
9 renewal after this court issues a discovery and scheduling order; and
- 10 5. Defendants' motion for a court order relieving them from having to respond to
11 plaintiff's motion for summary judgment (Doc. No. 103) is denied as unnecessary.

12 Dated: March 1, 2015

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15 DALE A. DROZD
16 UNITED STATES MAGISTRATE JUDGE

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26 _____
27 ¹ Defendants have filed a motion for a court order relieving them from having to respond to
28 plaintiff's motion for summary judgment until the court rules on defendants' pending motions to
dismiss. In light of the court's denial of plaintiff's pending motion for summary judgment
without prejudice, the court will also deny defendants' motion for relief as unnecessary.