

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
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LUCIO A. BARROGA,
Plaintiff,
v.
BOARD OF ADMINISTRATION CAL
PUBLIC EMPLOYEES' RETIREMENT
SYSTEM,
Defendant.

No. 2:12-cv-01179-MCE-KJN

MEMORANDUM AND ORDER

On March 2, 2012, Plaintiff Lucio A. Barroga ("Plaintiff") filed a Complaint against Defendant Board of Administration Cal Public Employees' Retirement System. (ECF No. 1.) On June 11, 2012, Plaintiff requested an entry of default. (ECF No. 6.) The Clerk of the Court entered a default on the same day, finding that Defendant had been served with process but had failed to appear, plead or answer Plaintiff's Complaint. (ECF No. 7.) Plaintiff then moved for default judgment (ECF No. 8), which Magistrate Judge Newman denied (ECF No. 9.) Judge Newman also ordered the entry of default vacated, as Plaintiff had failed to properly serve Defendant with the summons and complaint.

(ECF No. 9.)

///

1 On July 12, 2012, Plaintiff again moved for default judgment (ECF No. 11), which
2 Magistrate Judge Newman again denied without prejudice (ECF No. 12). In its order
3 denying default judgment, the Court noted that Plaintiff's motion for default judgment did
4 not cure the defects in service the Court raised in its prior order, and also observed the
5 Plaintiff had not sought a clerk's entry of default before filing the motion for default
6 judgment. (ECF No. 12.)

7 Plaintiff filed a "Response" to Judge Newman's order on the Motion for Default
8 Judgment. (ECF No. 13.) In this Response, Plaintiff states that Judge Newman has no
9 jurisdiction over the case because the parties did not consent to the jurisdiction of a
10 magistrate judge, as required by 28 U.S.C. 636(c)(1), and as such Judge Newman's
11 order is invalid. (Id.)

12 On September 11, 2012, Defendant filed a Motion to Dismiss. (ECF No. 21.) On
13 October 12, 2012, Plaintiff filed a Motion for Judgment on the Pleadings "to be heard
14 concurrently with the Defendant's Motion to Dismiss." (ECF No. 28.) A hearing was
15 held on the Motion to Dismiss on October 18, 2012. (ECF No. 31.) On October 26,
16 2012, Judge Newman issued findings and recommendations recommending that
17 Defendant's Motion to Dismiss be granted in part, and that Plaintiff's Motion for
18 Judgment be denied as moot. (ECF No. 32.)

19 On October 25, 2012, Plaintiff again filed a Motion for Judgment on the Pleadings,
20 noticing the motion for November 8, 2012, before Judge England. (ECF No. 33.) The
21 Court issued a minute order stating that pursuant to Local Rule 302(c), Plaintiff's Motion
22 for Judgment on the Pleadings (ECF No. 33) must be re-noticed according to Local Rule
23 230(a) before the assigned Magistrate Judge. (ECF No. 35.) Accordingly, the Court
24 vacated the November 8, 2012, hearing date. (Id.)

25 On November 15, 2012, Plaintiff filed yet another Motion for Judgment on the
26 Pleadings, again noticing the motion for hearing on November 29, 2012, before Judge
27 England. (ECF No. 37.)

28 ///

1 The Court issued a minute order again stating that pursuant to Local Rule 302(c),
2 Plaintiff's Motion for Judgment on the Pleadings must be re-noticed according to Local
3 Rule 230(a) before the assigned Magistrate Judge. (ECF No. 38.) The Court thus
4 vacated the November 29, 2012, hearing date.

5 By way of response, Plaintiff filed a request for a hearing date of December 6,
6 2012, to have his Motion for Judgment on the Pleadings heard before Judge England.
7 (ECF No. 40.) On December 5, 2012, the Court issued a minute order denying Plaintiff's
8 Renewed Request for a hearing on the Motion for Judgment on the Pleadings, pursuant
9 to Local Rule 302(c). (ECF No. 41.) The Court again ordered that the Motion be re-
10 noticed according to Local Rule 230(a) before the assigned Magistrate Judge. (Id.)

11 On December 12, 2012, Plaintiff filed a Memorandum in Support of Motion for
12 Judgment, noticing a hearing for December 27, 2012, before Judge England.

13 As stated in the Court's previous minute orders, Local Rule 302(c)(21) provides
14 that Magistrate Judges shall perform the duties in civil matters in "all actions in which all
15 the plaintiffs or defendants are proceeding in propria persona, including dispositive and
16 non-dispositive motions and matters." Because Plaintiff represents himself, under Local
17 Rule 302(c)(21) the Magistrate Judge—in this case, Magistrate Judge Newman—shall
18 hear all dispositive and non-dispositive motions and matters. See E.D. Cal. Local R.
19 302(c)(21).

20 Local Rule 230(a) provides: "Each Judge or Magistrate Judge maintains an
21 individual motion calendar. Information as to the times and dates for each
22 motion calendar may be obtained from the Clerk or the courtroom deputy
23 clerk for the assigned Judge or Magistrate Judge." Moreover, Local Rule
24 230(b) states, in relevant part, that: all motions shall be noticed on the
25 motion calendar of the assigned Judge or Magistrate Judge. The moving
26 party shall file a notice of motion, motion, accompanying briefs, affidavits, if
27 appropriate, and copies of all documentary evidence that the moving party
28 intends to submit in support of the motion. The matter shall be set for
hearing on the motion calendar for the Judge or Magistrate Judge to whom
the action has been assigned or before whom the motion is to be heard

.....

///


///

1 Accordingly, Plaintiff may not notice a motion before Judge England. Pursuant to Local
2 Rule 302(c)(21), Magistrate Judge Newman is the Judge to hear all dispositive and non-
3 dispositive motions and matters in Plaintiff's case. Thus, in noticing a motion, Plaintiff
4 must notice the motion before Judge Newman, as it is Judge Newman, and not Judge
5 England, who will hear the motions in Plaintiff's case.

6 As such, Plaintiff's Motion to Judgment on the Pleadings (ECF No. 37) must be
7 re-noticed before Judge Newman. Any notice of a hearing before Judge England is
8 procedurally improper and will be vacated. By the same token, the hearing noticed by
9 Plaintiff for December 27, 2012, (ECF No. 43) is VACATED. There will be no hearing on
10 that date. Should Plaintiff wish to have his Motion for Judgment on the Pleadings heard,
11 he must properly notice the motion before the Magistrate Judge assigned to the case,
12 pursuant to the Eastern District of California's Local Rules as set forth above.

13 IT IS SO ORDERED.

14 Dated: December 19, 2012

15 
16 MORRISON C. ENGLAND, JR., CHIEF JUDGE
17 UNITED STATES DISTRICT COURT
18
19
20
21
22
23
24
25
26
27
28