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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MILTON SYKES,
Plaintiff,
v.
ATHANNASIOUS, et al.,
Defendants.

No. 2:12-cv-2570 TLN KJN P

ORDER

On August 9, 2013, this court directed plaintiff's appointed counsel to respond to plaintiff's motions to amend his complaint, filed in pro se; each motion also criticizes counsel's representation of plaintiff. Counsel timely submitted a confidential response, which he served on plaintiff. Although plaintiff was directed to submit and serve a confidential response within seven days, he failed to do so. On September 16, 2013, the court again directed plaintiff to submit a response; plaintiff again failed to respond. Hence, the court twice directed plaintiff to respond to his counsel's declaration (ECF Nos. 47, 48), both orders triggered by plaintiff's pro se filings expressing dissatisfaction with his legal representation and seeking amendment of his complaint (ECF Nos. 44-6). However, plaintiff has responded to neither order, nor otherwise communicated with the court.

The court construes plaintiff's silence as acquiescence to his continued representation by appointed counsel, Mr. Isaac Fisher. It is clear from Mr. Fisher's declaration that he is actively

1 involved in plaintiff's representation.

2 Moreover, as previously noted, the court is keenly aware of plaintiff's advanced age (78),
3 and alleged medical problems. (See ECF No. 48 at 2.) As of this writing, plaintiff remains
4 incarcerated at the California Medical Facility. Plaintiff's age and alleged medical conditions,
5 together with his failure to respond to the court's orders, support his continued representation by
6 Mr. Fisher at this time.¹

7 Accordingly, IT IS HEREBY ORDERED that:

8 1. Plaintiff's motions to amend the complaint, filed in pro se (ECF Nos. 44-6), are denied
9 without prejudice.


10 2. Mr. Fisher shall retain his appointment as pro bono counsel for plaintiff, absent further
11 order of this court.

12 3. Discovery may commence in this action, pursuant to the Discovery and Scheduling
13 Order, filed in tandem with this order.

14 4. In addition, counsel with the California Attorney General's Office shall, within
15 fourteen days after the filing date of this order, file and serve a statement that updates defense
16 counsel's statement filed July 19, 2013 (ECF No. 43), which indicated that the Office would
17 likely accept service of process on behalf of defendant Dr. Bick, upon his anticipated return to the
18 United States in late August 2013. Alternatively, within fourteen days, the Office may accept
19 service of process in this action on behalf of defendant Dr. Bick.

20 SO ORDERED.

21 Dated: October 4, 2013

22 
23 KENDALL J. NEWMAN
24 UNITED STATES MAGISTRATE JUDGE

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27 ¹ Should Mr. Fisher seek to withdraw his representation of plaintiff, as he has indicated he may,
28 the court will consider such request only if another attorney, located by the court, has agreed to
undertake plaintiff's representation.