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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

RONALD E. CEARLEY,  
Plaintiff,  
v.  
WELLS FARGO BANK,  
Defendant.

No. 2:15-cv-353-MCE-EFB PS

ORDER

On February 18, 2015, defendant filed a motion to dismiss plaintiff’s complaint for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6), and noticed the motion for hearing on April 22, 2015. ECF No. 4. The docket reflects that plaintiff has not filed an opposition or statement of non-opposition to the motion. Local Rule 230(c) provides that opposition to the granting of a motion, or a statement of non-opposition thereto, must be served upon the moving party, and filed with this court, no later than fourteen days preceding the noticed hearing date or, in this instance, by April 8, 2015.

However, it does not appear that plaintiff was properly served with a copy of the defendant’s motion. The proof of service attached to the motion to dismiss states that plaintiff was served electronically via the court’s CM/ECF System. ECF No. 4 at 27. Local Rule 135(b) provides that electronic service is inappropriate for parties that have not registered with CM/ECF, e.g. prisoners or pro se parties, and that such parties must be conventionally served. E.D. Cal.

1 L.R. 135(b). The court has not authorized plaintiff to register with CM/ECF or to otherwise  
2 receive service electronically. *See* E.D. Cal. L.R. 133(b)(2) (“Any person appearing pro se may  
3 not utilize electronic filing except with the permission of the assigned Judge or Magistrate  
4 Judge.”). Thus, defendant failed to properly serve plaintiff with a copy of the motion to dismiss.

5 Accordingly, it is hereby ORDERED that:

6 1. Defendant shall conventionally serve plaintiff with a copy of the motion to dismiss in  
7 compliance with the court’s local rules and the Federal Rules of Civil Procedure by no later than  
8 April 20, 2015;

9 2. The hearing on defendant’s motion to dismiss, ECF No. 4, is continued to May 20,  
10 2015;

11 3. Plaintiff shall file an opposition to the motion, or a statement of non-opposition thereto,  
12 no later than May 6, 2015; and

13 4. Defendant may file a reply to plaintiff’s opposition, if any, on or before May 13, 2015.

14 DATED: April 16, 2015.

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16 EDMUND F. BRENNAN  
17 UNITED STATES MAGISTRATE JUDGE  
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