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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

IVAN VON STAICH,
Plaintiff,
v.
CALIFORNIA BOARD OF PAROLE
HEARINGS, et al.,
Defendant.

No. 2:15-cv-1182 JAM DB P

ORDER

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with a civil rights action. Before the court is plaintiff's motion to hold the defendants in contempt. For the reasons set forth below, plaintiff's motion is denied.

On May 12, 2016, the court determined that plaintiff's first amended complaint appeared to state a cognizable claim for relief against defendants Ferguson and Fassnacht pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 1915A(b). (ECF No. 9.) By order filed June 29, 2016, the court directed the U.S. Marshall to serve the complaint upon defendants Ferguson and Fassnacht. (ECF No. 15.) The order directed the Marshall to notify the defendants of this action and request a waiver of service within fourteen days. Unfortunately, that notification did not go out in a timely manner. On November 16, 2016, the Marshall filed waiver of service forms from both

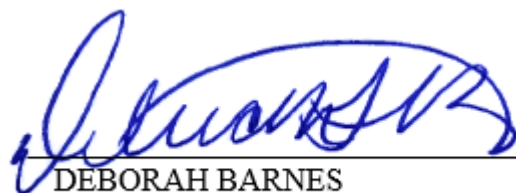
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1 defendants. (ECF No. 21.) Those forms show that the waivers were sent to defendants on
2 September 15, 2016.

3 On October 20, 2016, plaintiff filed a document entitled “Ex Parte Motion Requesting
4 Court to Issue Contempt Findings Against Defendants.” (ECF No. 18.) Therein, plaintiff
5 contends that defendants failed to comply with the court’s order filed June 29 by failing to
6 respond to the complaint and that they should be held in contempt under Federal Rule of Civil
7 Procedure 70(e) for violating a court order. While the court understands plaintiff’s frustration
8 with the delay, that delay is not attributable to defendants. Defendants had sixty days to return
9 their waiver of service forms after being served with those forms. (See June 29, 2016 Order (ECF
10 No. 15) at 2.) Because defendants were served with the forms on September 15, 2016, the forms
11 were due to be returned to the Marshall sixty days later, by November 14, 2016. The forms show
12 that defendants signed them on November 1, within the sixty-day window. (ECF No. 21.) As
13 set out in the court’s June 29 order, defendants are required to respond to the first amended
14 complaint within sixty days after the request for waiver was sent. See also Fed. R. Civ. P 12(a).

15 Accordingly, IT IS HEREBY ORDERED that plaintiff’s October 20, 2016 Ex Parte
16 Motion Requesting Court to Issue Contempt Findings Against Defendants (ECF No. 18) is
17 denied.

18 Dated: November 22, 2016

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22 DEBORAH BARNES
23 UNITED STATES MAGISTRATE JUDGE
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26 DLB:9
27 DLB1/prisoner-civil rights/vons1182.contempt
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