

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
FOR THE EASTERN DISTRICT OF CALIFORNIA

PAUL DAVID JOHNSON,
Plaintiff,
v.
E. NAKU, M.D., et al.,
Defendants.

No. 2:15-cv-1313 TLN KJN P

ORDER

On June 4, 2021, defendant Mahmoud filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12. Plaintiff did not oppose the motion. On July 26, 2021, plaintiff was advised of the following:

Local Rule 230(l) provides in part: “Failure of the responding party to file written opposition or to file a statement of no opposition may be deemed a waiver of any opposition to the granting of the motion” Id. Local Rule 110 provides that failure to comply with the Local Rules “may be grounds for imposition of any and all sanctions authorized by statute or Rule or within the inherent power of the Court.” Id.

Finally, Rule 41(b) of the Federal Rules of Civil Procedure provides:

Involuntary Dismissal; Effect. If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it. Unless the dismissal order states otherwise, a dismissal under this subdivision (b) and any dismissal not under this rule--except one for lack of jurisdiction,

1 improper venue, or failure to join a party under Rule 19--operates as
2 an adjudication on the merits.


3 Id. Plaintiff was ordered to file an opposition to the motion to dismiss within thirty days. (ECF
4 No. 156 at 3.)

5 Despite defendant Mahmoud's motion, and the court's order granting plaintiff additional
6 time to file an opposition, plaintiff has not filed an opposition. Rather, on November 10, 2021,
7 plaintiff filed a request for entry of default. However, such request for default is not well-taken
8 given defendant Mahmoud's motion to dismiss, which is authorized under Federal Rule of Civil
9 Procedure 12. Plaintiff's motion for default is denied. In an abundance of caution, plaintiff is
10 granted one final opportunity to file an opposition to the motion.

11 Accordingly, IT IS HEREBY ORDERED that:

- 12 1. Plaintiff's request for entry of default (ECF No. 174) is denied; and
- 13 2. Plaintiff is granted one final thirty-day period in which to file an opposition, if any, to
14 the defendant Mahmoud's motion to dismiss. Failure to file an opposition within thirty days from
15 the date of this order will be deemed as consent to have the: (a) motion granted; and (b) to have
16 defendant Mahmoud dismissed from this action based on plaintiff's failure to comply with these
17 rules and court orders. Fed. R. Civ. P. 41(b).

18 Dated: November 18, 2021

19 
20

KENDALL J. NEWMAN
21 UNITED STATES MAGISTRATE JUDGE

22 /john1313.def.nop2
23
24
25
26
27
28