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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JUAN ELLINBERG,
Plaintiff,
v.
F.FOULK, et al.,
Defendants.

No. 2:15-cv-1458 JAM AC P

ORDER

On November 15, 2016, sole remaining defendant Dr. Rosca, M.D., filed a motion for summary judgment pursuant to Federal Rule of Civil Procedure 56. See ECF No. 18. On the same date, defendant served plaintiff with the motion by mail. Id. at 3. Pursuant to Local Rule 230(l), plaintiff’s opposition or statement of non-opposition was due 21 days after service of the motion. This deadline has now expired.

Plaintiff has not opposed defendant’s motion or otherwise communicated with the court. Review of the Inmate Locator website operated by the California Department of Corrections and Rehabilitation indicates that plaintiff remains incarcerated at High Desert State Prison,¹ where he was served with defendant’s motion. Defendant’s motion notified plaintiff of the requirements

¹ See <http://inmatelocator.cdcr.ca.gov/search.aspx>. See also Fed. R. Evid. 201 (court may take judicial notice of facts that are capable of accurate determination by sources whose accuracy cannot reasonably be questioned).

1 for opposing a motion for summary judgment pursuant to Rand v. Rowland, 154 F.3d 952, 957
2 (9th Cir. 1998) (en banc). See ECF No. 18 at 19-22. By order filed November 3, 2015, this court
3 advised plaintiff of the same requirements. See ECF No. 11 at 6.

4 The court also informed plaintiff, pursuant to Local Rule 230(1), that failure to oppose a
5 motion may be deemed a waiver of opposition. Id. Additionally, Local Rule 110 provides that
6 failure to comply with court rules or any order of court “may be grounds for imposition of any
7 and all sanctions authorized by statute or Rule or within the inherent power of the Court.”
8 Further, Federal Rule of Civil Procedure Rule 41(b) provides for dismissal of an action “[i]f the
9 plaintiff fails to prosecute or to comply with these rules or a court order.”

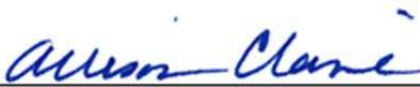
10 Although it appears that plaintiff has abandoned this case, the court will, in an abundance
11 of caution, accord plaintiff additional time to respond to defendant’s motion. Plaintiff may file an
12 opposition in accordance with the Rand requirements or file a statement of non-opposition.
13 Failure to file any response will result in the dismissal of this action.

14 Accordingly, IT IS HEREBY ORDERED that:

- 15 1. Plaintiff shall, within 21 days after the filing date of this order, file and serve an
16 opposition or statement of non-opposition to defendant’s pending motion for summary judgment.
- 17 2. Plaintiff’s failure to respond to this order will result in the dismissal of this action
18 without prejudice pursuant to Federal Rule of Civil Procedure 41(b).

19 SO ORDERED.

20 DATED: December 30, 2016

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22 ALLISON CLAIRE
23 UNITED STATES MAGISTRATE JUDGE
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