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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT BENYAMINI,
Plaintiff,
v.
TERRY, et al.,
Defendants.

No. 2:15-cv-2615-TLN-EFB P

ORDER

Plaintiff is a former state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. Instead of filing a responsive pleading or motion in accordance with Rule 12 of the Federal Rules of Civil Procedure, defendants have filed a motion for an order declaring plaintiff a vexatious litigant and requiring security under Local Rule 151(b). Local Rule 151(b) adopts the provisions of Title 3A, part 2, of the California Code of Civil Procedure, relating to vexatious litigants. One of those provisions provides that when a vexatious litigant motion is filed prior to trial, the litigation – including the moving defendant’s obligation to plead – is stayed. Cal. Civ. Proc. Code § 391.6. Setting aside the question of whether that stay provision is in variance with the pleading practices prescribed by the Federal Rules of Civil Procedure, Local Rule 151 (b) also states that the Court’s power “shall not be limited” by this provision. See E.D. Cal., Local Rule 151(b). Here, defendants’ motion calls upon the court to examine the merits of plaintiff’s complaint. Defendants contend that the allegations of the complaint do not state a claim upon which relief may be granted. The standards and procedures for determining whether

1 plaintiff's complaint is sufficient to state a claim are set out in Rule 12 of the Federal Rules of
2 Civil Procedure and governed by federal, not state law. For that reason, the court exercises its
3 discretion under Local Rule 151(b) to require defendants to address their contention that
4 plaintiff's complaint is either frivolous or fails to state a claim pursuant to a properly noticed and
5 briefed motion presented under either Rule 12 or Rule 56 of the Federal Rules of Civil Procedure.

6 Accordingly, IT IS HEREBY ORDERED that:

- 7 1. Within 30 days from the date of this order, defendants shall file a responsive pleading
8 or motion in accordance with Rule 12 (or if appropriate Rule 56).
- 9 2. Ruling on defendants' motion for an order declaring plaintiff a vexatious litigant (ECF
10 No. 14) is deferred pending the resolution of any Rule 12 or Rule 56 motion. The
11 Clerk shall terminate ECF No. 14. With any answer, defendants may file a notice of
12 renewal.

13 DATED: November 16, 2016.



EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE