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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARK FRANCIS KOCH,
Plaintiff,
v.
R. GODWIN, et al.,
Defendants.

No. 2:15-cv-2645 GEB DB P

ORDER

Plaintiff is a prisoner who is proceeding pro se and in forma pauperis. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983.

On May 9, 2016, the court ordered the United States Marshal to serve the complaint on defendants. Process directed to defendant A. Avanti was returned unserved because those at the address provided “cannot accept service on behalf of defendant.” The court then ordered plaintiff to provide additional information to serve this defendant. (ECF No. 27.) Specifically, the court directed plaintiff to promptly seek such information through discovery, the California Public Records Act, Calif. Gov’t. Code § 6250, et seq., or other means available to plaintiff. If access to the required information was denied or unreasonably delayed, plaintiff was allowed to pursue judicial intervention.

The Clerk of the Court sent to plaintiff one USM-285 forms, along with an instruction sheet and a copy of the complaint filed December 22, 2015. Within sixty days of the September

1 28, 2016 order, plaintiff was required to complete and submit the attached Notice of Submission
2 of Documents to the court, with the following documents:

- 3 a. One completed USM-285 form for each defendant A. Avanti;
- 4 b. Two copies of the endorsed complaint filed December 22, 2015; and
- 5 c. One completed summons form (if not previously provided) or show good cause
6 why he cannot provide such information.

7 The deadline for plaintiff to submit the appropriate documentation or to show good cause
8 why he cannot provide such information is now passed and plaintiff has not complied with the
9 court's order. IT IS HEREBY ORDERED that, within twenty-one (21) days of the date of this
10 order, plaintiff shall comply with the court's previous order entered on September 28, 2016 or
11 show good cause why he cannot comply. If plaintiff still does not comply, then the court may
12 recommend that this matter be dismissed for failure to prosecute.

13 In addition to not complying with the court's September 28, 2016 order, plaintiff also has
14 yet to file a response to defendant Duffy's motion to dismiss (ECF No. 15) that was filed on July
15 29, 2016. On August 19, 2016, defendants Mora, Castro, Gallegos, Miller and Godwin joined the
16 motion to dismiss. (ECF No. 17.) Local Rule 230(l) provides in part: "Failure of the responding
17 party to file written opposition or to file a statement of no opposition may be deemed a waiver of
18 any opposition to the granting of the motion[.]" On May 9, 2016, plaintiff was advised of the
19 requirements for filing an opposition to the motion and that failure to oppose such a motion may
20 be deemed a waiver of opposition to the motion. (ECF No. 11.)

21 Local Rule 110 provides that failure to comply with the Local Rules "may be grounds for
22 imposition of any and all sanctions authorized by statute or Rule or within the inherent power of
23 the Court." In the order filed May 9, 2016, plaintiff was advised that failure to comply with the
24 Local Rules may result in a recommendation that the action be dismissed. (ECF No. 11.)

25 Good cause appearing, IT IS HEREBY ORDERED that:


26 (1) Within twenty-one (21) days of the date of this order, plaintiff shall comply with
27 the court's previous order entered on September 28, 2016 or show good cause why he cannot

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1 comply (if plaintiff still does not comply, then the court will recommend that this matter be
2 dismissed for failure to prosecute); and

3 (2) Within twenty-one (21) days of the date of this order, plaintiff shall file an
4 opposition, if any, to the motion to dismiss filed on behalf of the defendant Duffy and joined by
5 defendants Mora, Castro, Gallegos, Miller and Godwin. Failure to file an opposition will be
6 deemed as a statement of non-opposition and shall result in a recommendation that this action be
7 dismissed pursuant Federal Rule of Civil Procedure 41(b). Alternatively, if plaintiff no longer
8 wishes to pursue this action he may file a request to voluntarily dismiss this case.

9 Dated: December 7, 2016

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12 DEBORAH BARNES
13 UNITED STATES MAGISTRATE JUDGE
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