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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

E. DRAKE,

Plaintiff,

v.

THE NIELLO COMPANY, NIELLO
IMPORTS OF ROCKLIN, INC., NIELLO
PERFORMANCE MOTORS INC.,
NIELLO MOTOR CAR COMPANY AND
SHIPPING EXPERTS INC.,

Defendants.

No. 2:17-cv-1036-JAM-EFB PS

ORDER AND ORDER TO SHOW CAUSE

Defendant Niello Performance Motors, Inc. (“Niello Performance”) has moved to declare plaintiff a vexatious litigant and for an order imposing pre-filing restrictions. ECF No. 120. The motion is currently set for hearing on December 5, 2018. ECF No. 136.

Court records reflect that plaintiff has not filed an opposition or statement of non-opposition to the motion. Local Rule 230(c) provides that opposition to the granting of a motion, or a statement of non-opposition thereto, must be served upon the moving party, and filed with this court, no later than fourteen days preceding the noticed hearing date or, in this instance, by November 21, 2018. Local Rule 230(c) further provides that “[n]o party will be entitled to be heard in opposition to a motion at oral arguments if opposition to the motion has not been timely filed by that party.” Local Rule 183, governing persons appearing in pro se, provides that failure

1 to comply with the Federal Rules of Civil Procedure and Local Rules may be grounds for
2 dismissal, judgment by default, or other appropriate sanctions. Local Rule 110 provides that
3 failure to comply with the Local Rules “may be grounds for imposition by the Court of any and
4 all sanctions authorized by statute or Rule or within the inherent power of the Court.” Pro se
5 litigants are bound by the rules of procedure, even though pleadings are liberally construed in
6 their favor. *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987).

7 Accordingly, good cause appearing, it is hereby ORDERED that:

8 1. The hearing on defendant Niello Performance’s motion to declare plaintiff a vexatious
9 litigant and for an order imposing prefiling restrictions (ECF No. 120) is continued to January 30,
10 2019 at 10:00 a.m. in Courtroom No. 8.

11 2. Plaintiff shall show cause, in writing, no later than January 9, 2019, why sanctions
12 should not be imposed for failure to timely file an opposition or a statement of non-opposition to
13 the pending motion.

14 3. Plaintiff shall file an opposition to defendant Niello Performance’s motion, or a
15 statement of non-opposition thereto, no later than January 9, 2019.

16 4. Failure to file an opposition to the motion will be deemed a statement of non-
17 opposition thereto, and may result in a recommendation that the motion be granted.

18 5. Defendant Niello Performance may file a reply to plaintiff’s opposition, if any, on or
19 before January 16, 2019.

20 DATED: November 28, 2018.

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22 EDMUND F. BRENNAN
23 UNITED STATES MAGISTRATE JUDGE
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