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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CARLOS GILBERT LAW,
Plaintiff,
v.
LORI W. AUSTIN, et al.,
Defendants.

No. 2:17-cv-2060 JAM AC P

ORDER

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with this civil rights action filed pursuant to 42 U.S.C. § 1983. On November 6, 2019, defendants filed a motion to revoke plaintiff’s in forma pauperis status on the ground that he qualifies as a three-strikes litigant under 28 U.S.C. § 1915(g). See ECF No. 30. Plaintiff has not responded to defendants’ motion.

Plaintiff’s opposition (or statement of non-opposition) to defendants’ motion was due within twenty-one (21) days after service of the motion. See Local Rule 230(1). Granting three additional days for service of defendants’ motion on plaintiff by mail, see Fed. R. Civ. P. 6(d), the deadline for plaintiff to submit his opposition to prison authorities for mailing¹ was Monday,

¹ Under the prison mailbox rule, a document is deemed served or filed on the date it was signed by the prisoner and given to prison officials for mailing. See Houston v. Lack, 487 U.S. 266 (1988) (establishing prison mailbox rule); Campbell v. Henry, 614 F.3d 1056, 1059 (9th Cir. 2010) (applying the mailbox rule to both state and federal filings by incarcerated inmates).

1 December 2, 2019.² Even allowing an additional week for mailing and docketing, it is apparent
2 that plaintiff has not responded to defendants' motion.

3 Plaintiff is informed of the following legal authority. Local Rule 230(l) provides: "Failure
4 of the responding party to file written opposition or to file a statement of no opposition may be
5 deemed a waiver of any opposition to the granting of the motion." Local Rule 110 provides that
6 failure to comply with the Local Rules "may be grounds for imposition of any and all sanctions
7 authorized by statute or Rule or within the inherent power of the Court." Rule 41(b), Federal
8 Rules of Civil Procedure, authorizes the involuntary dismissal of a claim or action due to
9 plaintiff's failure to prosecute.

10 Plaintiff will be given one additional opportunity to respond to defendants' motion.
11 Failure to file and serve a response will be construed as plaintiff's non-opposition thereto,
12 resulting in a recommendation that the motion be granted and plaintiff's in forma pauperis status
13 be revoked.

14 Accordingly, IT IS HEREBY ORDERED that:

15 1. Plaintiff shall, on or before Friday, January 3, 2019, file and serve an opposition to
16 defendants' motion to revoke plaintiff's in forma pauperis status, OR file and serve a statement of
17 non-opposition to defendants' motion.

18 2. Defendants may file and serve a reply within seven (7) days after service of plaintiff's
19 opposition.

20 3. Should plaintiff fail to timely file and serve an opposition to defendants' motion, the
21 undersigned will recommend to the district judge that defendants' motion be granted and
22 plaintiff's in forma pauperis status be revoked.

23 DATED: December 11, 2019

24 
25 ALLISON CLAIRE
26 UNITED STATES MAGISTRATE JUDGE

27 ² The last day of this period expired on Saturday, November 30, 2019. Under Fed. R. Civ. P.
28 6(a)(1)(C), when a deadline falls on a weekend or legal holiday, it is continued to the end of the
next day that is not a Saturday, Sunday or legal holiday.