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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROBERT MCCARTHY,
Plaintiff,
v.
MICHAEL TIEN, et al.,
Defendants.

Case No. 17-cv-01932-KAW

FIFTH ORDER TO SHOW CAUSE

On August 2, 2017, the Court issued an order to show cause, requiring Plaintiff McCarthy to explain why the case should not be dismissed for failure to comply with the deadline to complete service on Defendant. (Dkt. No. 6.) Plaintiff's response was due on August 15, 2017; Plaintiff did not file a response.

On August 24, 2017, the Court issued a second order to show cause, requiring Plaintiff McCarthy to explain why the case should not be dismissed for failure to comply with the Court's order and for failure to comply with the deadline to complete service. (Dkt. No. 7.) On August 28, 2017, Plaintiff filed a response, stating that Defendant Michael Tien was served on April 27, 2017, but that additional time was needed to serve Defendant Yvonne M. Hemberger and the Hemberger Family Trust. (Dkt. No. 8.) Plaintiff requested 45 days to serve the summons and complaint on Defendant Hemberger Family Trust. That same day, Plaintiff filed the executed summons as to Defendant Tien, as well as an amended complaint adding Defendant Dana Devoto Hemberger as Trustee and removing Defendant Yvonne M. Hemberger. (Dkt. No. 9; First Amended Compl. ("FAC"), Dkt. No. 10.) In light of Plaintiff's filing, the Court discharged the order to show cause and extended the time to serve the Hemberger Family Trust by 45 days, or October 26, 2017.

1 Plaintiff did not file a proof of service indicating that the complaint was served on
2 Defendant Hemberger Family Trust. On November 28, 2017, the Court issued a third order to
3 show cause, ordering Plaintiff to, by December 8, 2017, show cause why the case should not be
4 dismissed as to Defendant Hemberger Family Trust for failure to comply with the deadline to
5 complete service on Defendant or to file a Motion for Administrative Relief. (Dkt. No. 14.)

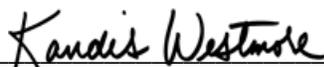
6 Plaintiff again failed to respond to the order to show cause. On December 12, 2017, the
7 Court issued a fourth order to show cause, ordering Plaintiff to, by December 22, 2017, show
8 cause why the case should not be dismissed as to Defendant Hemberger Family Trust for failure to
9 serve, and to explain why Plaintiff failed to comply with the November 28, 2017 order to show
10 cause. (Dkt. No. 15.)

11 As of the date of this order, Plaintiff has failed to file a response to the December 12, 2017
12 order to show cause. Additionally, although Defendant Tien was served on April 24, 2017, and
13 has yet to make an appearance in this case, Plaintiff has not moved for entry of default against
14 Defendant Tien.¹

15 Accordingly, the Court ORDERS Plaintiff to show cause, by **January 26, 2018**: (1) why
16 Plaintiff failed to comply with the November 28, 2017 and December 12, 2017 orders to show
17 cause; (2) why the case against Defendant Hemberger Family Trust should not be dismissed for
18 failure to serve; and (3) whether Plaintiff intends to proceed with this case as to Defendant Tien.
19 Failure to comply with this order will result in the Court reassigning the case to a District Judge
20 and recommending that the case be dismissed for failure to prosecute.

21 IT IS SO ORDERED.

22 Dated: January 11, 2018

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KANDIS A. WESTMORE
United States Magistrate Judge

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28 ¹ Plaintiff has taken no actions in this case since filing an amended complaint on August 28, 2017.
(Dkt. No. 10.) There is no record of the amended complaint being served on any Defendant.