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UNITED STATES DISTRICT COURT **JS-6**
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES -- GENERAL

Case No. **CV 19-9629-JFW(PJWx)** Date: January 7, 2020

Title: Peter Benedith *-v-* Cuyahoga County of Ohio, et al.

PRESENT:

HONORABLE JOHN F. WALTER, UNITED STATES DISTRICT JUDGE

Shannon Reilly	**None Present**
Courtroom Deputy	**Court Reporter**

ATTORNEYS PRESENT FOR PLAINTIFFS:	**ATTORNEYS PRESENT FOR DEFENDANTS:**
None	None

PROCEEDINGS (IN CHAMBERS): **ORDER GRANTING DEFENDANT CASE WESTERN RESERVE UNIVERSITY'S MOTION TO DISMISS PURSUANT TO RULES 12(b)(6) AND 12(b)(2) [filed 12/5/19; Docket No. 13]; and**

ORDER GRANTING DEFENDANT METROHEALTH MEDICAL CENTER'S MOTION TO DISMISS [filed 12/10/19; Docket No. 19]

On December 5, 2019, Defendant Case Western Reserve University ("Case Western") filed a Motion to Dismiss Pursuant to Rules 12(b)(6) and 12(b)(2) ("Motion to Dismiss"). Plaintiff Peter Benedith ("Plaintiff") did not file an Opposition. On December 30, 2019, Case Western filed a Reply. On December 10, 2019, Defendant The MetroHealth System, d/b/a MetroHealth Medical Center (improperly separately named and sued as Department of Medicine Metro Health Medical Center and Metro Health Medical Center) ("MetroHealth") filed a Motion to Dismiss. Plaintiff did not file an Opposition. On December 30, 2019, MetroHealth filed a Reply. Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court finds that these matters are appropriate for decision without oral argument. The hearing calendared for January 13, 2020 is hereby vacated and the matters taken off calendar. After considering the moving and reply papers, and the arguments therein, the Court rules as follows:

Pursuant to Local Rule 7-9, Plaintiff was required to file and serve his Oppositions or Notices of Non-Opposition "not later than twenty-one (21) days before the date designated for the hearing of the motion." *See* Local Rule 7-9. Local Rule 7-12 provides that "[t]he failure to file any required document, or the failure to file it within the deadline, may be deemed consent to the granting of the motion." *See* Local Rule 7-12. Plaintiff failed to file a timely Opposition to Case Western's Motion to Dismiss or MetroHealth's Motion to Dismiss. Pursuant to Local Rule 7-12, the

Initials of Deputy Clerk sr

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Court deems Plaintiff's failure to file Oppositions or to otherwise comply with Local Rule 7-9 as consent to the granting of Case Western's Motion to Dismiss and MetroHealth's Motion to Dismiss.

Accordingly, Case Western's Motion to Dismiss and MetroHealth's Motion to Dismiss are **GRANTED**. Plaintiff's Complaint is **DISMISSED without leave to amend** as to Case Western and MetroHealth. In addition, the Court exercises its discretion and *sua sponte* **DISMISSES without leave to amend** Plaintiff's Complaint as to the remaining non-moving defendant, Cuyahoga County of Ohio. *See, e.g., Bonny v. Society of Lloyd's* , 3 F.3d 156, 161 (7th Cir. 1993) ("A court may grant a motion to dismiss even as to nonmoving defendants where the nonmoving defendants are in a position similar to that of moving defendants or where the claims against all defendants are integrally related"). Therefore, this action is **DISMISSED with prejudice**.

IT IS SO ORDERED.

Initials of Deputy Clerk sr

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NOT FOR PUBLICATION

FILED

APR 27 2021

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PETER C. BENEDITH, Plaintiff-Appellant, v. CUYAHOGA COUNTY, Ohio; et al., Defendants-Appellees.	No. 20-55053 D.C. No. 2:19-cv-09629-JFW-PJW MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
John F. Walter, District Judge, Presiding

Submitted April 20, 2021**

Before: THOMAS, Chief Judge, TASHIMA and SILVERMAN, Circuit Judges.

Peter C. Benedith appeals pro se from the district court's order dismissing his diversity action alleging various state law claims. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion the district court's dismissal under its local rules. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

We affirm.

The district court did not abuse its discretion in dismissing Benedith's claims against defendants Case Western Reserve University and The MetroHealth System, d/b/a MetroHealth Medical Center (improperly separately named and sued as Department of Medicine Metro Health Medical Center and Metro Health Medical Center) after Benedith failed to file an opposition to defendants' motions to dismiss as required by Local Rule 7-9. *See* C.D. Cal. L.R. 7-12 (providing that "failure to file any required document" may be deemed consent to the granting or denial of the motion); *Ghazali*, 46 F.3d at 53-54 (setting forth factors to be considered before dismissing an action for failure to follow the local rules, concluding that this court may review the record independently if the district court does not make explicit findings to show its consideration of the factors, and noting that pro se litigants are bound by the rules of procedure).

Because Benedith in his opening brief failed to raise specifically and distinctly any argument regarding the district court's sua sponte dismissal of the remaining defendant, Cuyahoga County, Benedith has waived any challenge to the dismissal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009); *Acosta–Huerta v. Estelle*, 7 F.3d 139, 144 (9th Cir. 1993) (issues not supported by argument in pro se appellant's opening brief are waived).

AFFIRMED.

2:19-cv-09629-JFW-PJW Peter Benedith v. Cuyahoga County of Ohio, et al.
John F. Walter, presiding
Patrick J. Walsh, referral
Date filed: 11/08/2019
Date terminated: 01/07/2020
Date of last filing: 05/19/2021

History

Doc. No.	Dates	Description
1	*Filed:* 11/08/2019 *Entered:* 11/12/2019	Complaint - (Discovery)
2	*Filed:* 11/08/2019 *Entered:* 11/12/2019	Summons Issued
3	*Filed:* 11/08/2019 *Entered:* 11/12/2019	Summons Issued
4	*Filed:* 11/08/2019 *Entered:* 11/12/2019	Summons Issued
5	*Filed:* 11/08/2019 *Entered:* 11/12/2019	Summons Issued
6	*Filed:* 11/08/2019 *Entered:* 11/12/2019	Certificate/Notice of Interested Parties
7	*Filed:* 11/08/2019 *Entered:* 11/12/2019 *Terminated:* 11/13/2019	Motion for Pro Se Electronic Filing - CV-5
8	*Filed:* 11/08/2019 *Entered:* 11/12/2019	Notice of Assignment to United States Judges(CV-18) - optional html form
9	*Filed:* 11/08/2019 *Entered:* 11/12/2019	Notice to Parties of Court-Directed ADR Program (ADR-8) - optional html form
10	*Filed & Entered:* 11/13/2019	Initial Order upon Filing of Complaint - form only
11	*Filed & Entered:* 11/13/2019	Order
12	*Filed & Entered:* 11/13/2019	Order on Motion for Pro Se Electronic Filing - CV-5 O
13	*Filed & Entered:* 12/05/2019 *Terminated:* 01/07/2020	Motion to Dismiss (cause or other)
14	*Filed & Entered:* 12/05/2019	Corporate Disclosure Statement
15	*Filed & Entered:* 12/05/2019	Certificate/Notice of Interested Parties
16	*Filed &* 12/06/2019	Text Only Scheduling Notice

	Entered:		ID
17	*Filed &* *Entered:*	12/06/2019	Minutes of In Chambers Order/Directive - no proceeding held
18	*Filed &* *Entered:*	12/07/2019	Statement
23	*Filed:* *Entered:* *Terminated:*	12/09/2019 12/17/2019 12/12/2019	Motion for Leave to File Document
24	*Filed:* *Entered:*	12/09/2019 12/17/2019	Proof of Service (subsequent documents)
19	*Filed &* *Entered:* *Terminated:*	12/10/2019 01/07/2020	Motion to Dismiss Case
20	*Filed &* *Entered:*	12/10/2019	Text Only Scheduling Notice
21	*Filed:* *Entered:*	12/12/2019 12/13/2019	Minutes of In Chambers Order/Directive - no proceeding held
22	*Filed &* *Entered:*	12/17/2019	Minutes of In Chambers Order/Directive - no proceeding held
25	*Filed &* *Entered:*	12/18/2019	Declaration
26	*Filed &* *Entered:*	12/18/2019	Certificate/Notice of Interested Parties
27	*Filed &* *Entered:*	12/30/2019	Reply (Motion related)
28	*Filed &* *Entered:*	12/30/2019	Reply (Motion related)
29	*Filed &* *Entered:*	12/30/2019	Joint Report Rule 26(f) Discovery Plan
30	*Filed &* *Entered:*	01/07/2020	Order on Motion to Dismiss
31	*Filed:* *Entered:*	01/07/2020 01/08/2020	Notice of Document Discrepancies and Order - Rejecting
32	*Filed:* *Entered:* *Terminated:*	01/09/2020 01/13/2020 05/19/2021	Notice of Appeal to 9th Circuit Court of Appeals
33	*Filed &* *Entered:*	01/13/2020	Filing Fee Letter (A-15CV)
34	*Filed:* *Entered:*	01/14/2020 01/15/2020	USCA Notification of Case Number
35	*Filed:* *Entered:*	01/14/2020 01/15/2020	USCA Memorandum/Opinion/Order
36	*Filed:* *Entered:* *Terminated:*	01/17/2020 01/29/2020 05/19/2021	Notice of Appeal to 9th Circuit Court of Appeals
37	*Filed:* *Entered:*	01/17/2020 01/29/2020	Designation of Record on Appeal

	Filed & Entered:	01/22/2020	Appeal Fees Paid
38	*Filed & Entered:*	01/29/2020	Filing Fee Letter (A-15CV)
39	*Filed & Entered:*	04/27/2021	USCA Memorandum/Opinion/Order
40	*Filed:* *Entered:*	05/19/2021 05/20/2021	USCA Mandate

PACER Service Center

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF DOCUMENT DISCREPANCIES

To: ☑ U.S. District Judge / ☐ U.S. Magistrate Judge JFW

From: Chris Sawyer, Deputy Clerk Date Received: 12/30/19

Case No.: CV19-9629-JFW(PJWx) Case Title: Peter Benedith v. Cuyahoga County of Ohio, et al.

Document Entitled: Plaintiff motion.

Upon the submission of the attached document(s), it was noted that the following discrepancies exist:

☐ Local Rule 5-4.1	Documents must be filed electronically
☑ Local Rule 6-1	Written notice of motion lacking or timeliness of notice incorrect
☐ Local Rule 7-19.1	Notice to other parties of ex parte application lacking
☐ Local Rule 7.1-1	No Certification of Interested Parties and/or no copies
☐ Local Rule 11-3.1	Document not legible
☐ Local Rule 11-3.8	Lacking name, address, phone, facsimile numbers, and e-mail address
☐ Local Rule 11-4.1	No copy provided for judge
☐ Local Rule 11-6	Memorandum/brief exceeds 25 pages
☐ Local Rule 11-8	Memorandum/brief exceeding 10 pages shall contain table of contents
☐ Local Rule 15-1	Proposed amended pleading not under separate cover
☐ Local Rule 16-7	Pretrial conference order not signed by all counsel
☐ Local Rule 19-1	Complaint/Petition includes more than 10 Does or fictitiously named parties
☐ Local Rule 56-1	Statement of uncontroverted facts and/or proposed judgment lacking
☐ Local Rule 56-2	Statement of genuine disputes of material fact lacking
☐ Local Rule 83-2.5	No letters to the judge
☐ Fed. R. Civ. P. 5	No proof of service attached to document(s)
☑ Other:	Judicial determination is required.

Please refer to the Court's website at www.cacd.uscourts.gov for Local Rules, General Orders, and applicable forms.

ORDER OF THE JUDGE/MAGISTRATE JUDGE

IT IS HEREBY ORDERED:

☐ The document is to be filed and processed. The filing date is ORDERED to be the date the document was stamped "received but not filed" with the Clerk. Counsel* is advised that any further failure to comply with the Local Rules may lead to penalties pursuant to Local Rule 83-7.

Date U.S. District Judge / U.S. Magistrate Judge

☒ The document is **NOT** to be filed, but instead **REJECTED**, and is ORDERED returned to counsel.* Counsel* shall immediately notify, in writing, all parties previously served with the attached documents that said documents have **not** been filed with the Court.

January 7, 2020 [signature]
Date U.S. District Judge / U.S. Magistrate Judge

* The term "counsel" as used herein also includes any pro se party. See Local Rule 1-3.

COPY 1 -ORIGINAL-OFFICE COPY 2 -JUDGE COPY 3 -SIGNED & RETURNED TO FILER COPY 4 -FILER RECEIPT

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF DOCUMENT DISCREPANCIES

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Date U.S. District Judge / U.S. Magistrate Judge

* The term "counsel" as used herein also includes any pro se party. See Local Rule 1-3.

COPY 1 -ORIGINAL-OFFICE COPY 2 -JUDGE COPY 3 -SIGNED & RETURNED TO FILER COPY 4 -FILER RECEIPT

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Name: PETER C BENEDITH
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905 LA CA 90014
Phone: 310-483-0579
Fax:
In Pro Per

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PETER C BENEDITH

Plaintiff

v.

CUYAHOGA COUNTY OF OHIO et al

Defendant(s).

CASE NUMBER:

2:19CV09629 JFW-PJWx

(Enter document title in the space provided above)

Get next Page

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United State District Court

Central California Los Angeles

Peter C Benedith

Plaintiff

Case Number

2:19cv09629 JFW-PJW

Cuyahoga County of Ohio et al

Motion to Denial Defense

Motion to Dismiss

Defendant

To the District Court

The plaintiff is filling this motion with the court and is arguing that the defense motion to demise should be denied. And here is why. In 2012 the plaintiff attempted to sue the defendants and even if that was for a wrong reason, this is how they responded instead, they started what the plaintiff interpreted as an act intimidation and not just through action but each time they always wanted to make the presence known. For example, on a random telephone call by the plaintiff, on the background was one of their physicians (number one on the list Benedith V Department of medicine et al 4:17-cv-04575-JST) who is employed by the four defendants. Do I really feel sorry for this defendants and including that county whose media reports has documented their financial support for these organized criminals (Intimidation, stalking, having someone lose the job, electronic surveillance and what is being alleged at this action and many more. Of course, I feel sorry for them because I know deep down that they cannot help themselves. This is why I am hoping that this court should help them because for this defendants to do what is being alleged in the complaint and for which the

plaintiff believes can be proven in this court, first they must break into a place where they have no permission to do so and then tamper with someone else property without consent and then sit back like a sadist to watch what they know full well could happen. The defendants have demonstrated a clear pattern of wrongdoing and the results of their actions cannot and should not be lost on anyone's imagination.

This is what the plaintiff is saying. These defendants came up with a device after 2012 and saw what happened as a result of that device, their continued use of that device is not lost to the imagination of the plaintiff to what it does and the plaintiff is convinced that the use of that device is also not lost in the imagination of the defendants on it intended purpose of it; harming someone else. Also, their presence at the scene of the crime; a different state from where they like to do business, points to the absolute guilt of these defendants (they are aware of that device). Therefore, their motion to demise should be denied and instead, a trial should be set here in California where that wonderful device of theirs was used. The diversity of citizenship does allow this court to hear this case.

Peter C Benedith

Peter C Benedith

12/18/19

Certificate of Service

I declare that I am a citizen of United State of America and a resident of Los Angeles California. On this day 12/20/19, I placed a copy of this court fillings to the addresses below via U. S. Mail with postage fully paid around the Los Angeles municipal area. Confirmation for delivery obtained.

1) Avril G. Love (Attorney for the Defendants)

   515 South Flower Street Forty Second Floor Los Angeles, CA 90071

2) Nicole A. Naleway (Attorney for the Defendants)
   Park Tower, 695 Town Center Drive, Fifteenth Floor | Costa Mesa, CA 92626

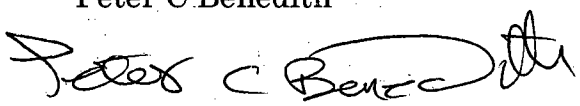
Peter C Benedith

Peter C Benedith

12/20/2019

No.....

Peter C Benedith



Petitioner-appellant-plaintiff

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July 2021