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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

NORRIS LEE,

1:02-cv-05037-LJO-GSA-PC

Plaintiff,

ORDER GRANTING DEFENDANT HOUGH
EXTENSION OF TIME NUNC PRO TUNC TO
FILE UNENUMERATED RULE 12(b) MOTION
TO DISMISS
(Doc. 69.)

v.

C/O HOUGH, et al.,

Defendants.

THIRTY DAY DEADLINE FOR PLAINTIFF
TO FILE OPPOSITION OR STATEMENT OF
NON-OPPOSITION TO:

- 1) DEFENDANT WHITE’S MOTION TO DISMISS (Doc. 64), AND
- 2) DEFENDANT HOUGH’S MOTION TO DISMISS (Doc. 70)

Norris Lee (“Plaintiff”) is a state prisoner proceeding pro se with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on January 8, 2002. (Doc. 1.)

I. EXTENSION OF TIME

The Court’s Discovery/Scheduling Order of December 14, 2010, established a deadline of February 14, 2011, for the parties to file unenumerated Rule 12(b) motions to dismiss. (Doc. 54.) On March 14, 2011, defendant Hough filed a motion to extend the deadline, in light of the fact that defendant Hough did not appear in this action until March 3, 2011, after the Court’s deadline had expired. (Doc. 69.) On March 15, 2011, defendant Hough filed an unenumerated Rule 12(b)

1 motion to dismiss. (Doc. 70.) Good cause having been presented to the Court, defendant Hough
2 shall be granted an extension of time nunc pro tunc to file an unenumerated Rule 12(b) motion to
3 dismiss, and the motion to dismiss filed on March 15, 2011 shall be deemed timely.

4 **II. ORDER FOR PLAINTIFF TO RESPOND**

5 On February 14, 2011, defendant White filed a motion to dismiss this action, and on March
6 15, 2011, defendant Hough filed a motion to dismiss this action. (Docs. 64, 70.) Plaintiff was
7 required to file oppositions or statements of non-opposition to the motions within twenty-one days
8 of the date the motions were filed, but has not done so. Local Rule 230(1).

9 Local Rule 230(1) provides that the failure to oppose a motion "may be deemed a waiver
10 of any opposition to the granting of the motion..." The Court will deem any failure to oppose
11 defendants' motions to dismiss as a waiver, and recommend that the motions be granted on that
12 basis. Moreover, failure to follow a district court's local rules is a proper grounds for dismissal.
13 U.S. v. Warren, 601 F.2d 471, 474 (9th Cir. 1979). Thus, a court may dismiss an action for
14 plaintiff's failure to oppose a motion to dismiss, where the applicable local rule determines that
15 failure to oppose a motion will be deemed a waiver of opposition. See Ghazali v. Moran, 46 F.3d
16 52 (9th Cir. 1995), cert. denied 516 U.S. 838 (1995) (dismissal upheld even where plaintiff
17 contends he did not receive motion to dismiss, where plaintiff had adequate notice, pursuant to
18 Fed. R. Civ. P. 5(b), and time to file opposition); cf. Marshall v. Gates, 44 F.3d 722, 725 (9th
19 Cir. 1995).

20 Based on the foregoing, IT IS HEREBY ORDERED that:

- 21 1. Defendant Hough's motion for an extension of time to file an unenumerated Rule
22 12(b) motion to dismiss is GRANTED nunc pro tunc;
- 23 2. Defendant Hough's motion to dismiss, filed on March 15, 2011, is deemed timely;
- 24 3. Within thirty days of the date of service of this order, Plaintiff shall file an
25 opposition or statement of non-opposition to:
 - 26 1) Defendant White's motion to dismiss, filed on February 14, 2011, and
 - 27 2) Defendant Hough's motion to dismiss, filed on March 15, 2011; and

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4. If Plaintiff fails to comply with this order, the Court will deem the failure to respond as a waiver, and recommend that the motions be granted on that basis.

IT IS SO ORDERED.

Dated: May 9, 2011

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE