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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAMON JONES,

Plaintiff,

vs.

1: 06 CV 01812 AWI YNP SMS (PC)

FINDINGS AND RECOMMENDATION  
RE MOTION TO DISMISS (DOC 25)

JAMES YATES, et al.,

Defendants.

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in a civil rights action pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 72-302 pursuant to 28 U.S.C. § 636(b)(1). Pending before the Court is Defendants’ motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). Plaintiff has failed to oppose the motion.

Failure to follow a district court's local rules is a proper grounds for dismissal. U.S. v. Warren, 601 F.2d 471, 474 (9th Cir. 1979). Thus, a court may dismiss an action for plaintiff's failure to oppose a motion to dismiss, where the applicable local rule determines that failure to oppose a motion will be deemed a waiver of opposition. See Ghazali v. Moran, 46 F.3d 52 (9<sup>th</sup> Cir. 1995), cert. denied 116 S.Ct. 119 (1995) (dismissal upheld even where plaintiff contends he did not receive motion to dismiss, where plaintiff had adequate notice, pursuant to F.R.C.P. 5(b), and time to file opposition); cf. Marshall v. Gates, No. 93-5022, slip op. 99, 105-06 (9th Cir. Jan.

1 4, 1995); Henry v. Gill Industries, Inc., 983 F.2d 943, 949-50 (9th Cir. 1993) (motion for  
2 summary judgment cannot be granted simply as a sanction for a local rules violation, without an  
3 appropriate exercise of discretion).

4 Local Rule 78-230(m) provides that the failure to oppose a motion "may be deemed a  
5 waiver of any opposition to the granting of the motion..." The court will deem plaintiff's failure  
6 to oppose defendant's motion to dismiss a waiver, and recommend that the motion be granted on  
7 that basis.

8 Accordingly, IT IS HEREBY RECOMMENDED that Defendant's motion to dismiss be  
9 granted, and this action be dismissed for failure to state a claim upon which relief can be granted.

10 These findings and recommendations are submitted to the United States District Judge  
11 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty days  
12 after being served with these findings and recommendations, any party may file written  
13 objections with the court and serve a copy on all parties. Such a document should be captioned  
14 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections  
15 shall be served and filed within ten days after service of the objections. The parties are advised  
16 that failure to file objections within the specified time waives all objections to the judge's  
17 findings of fact. See Turner v. Duncan, 158 F.3d 449, 455 (9<sup>th</sup> Cir. 1998). Failure to file  
18 objections within the specified time may waive the right to appeal the District Court's order.  
19 Martinez v. Ylst, 951 F.2d 1153 (9<sup>th</sup> Cir. 1991).

20  
21 IT IS SO ORDERED.

22 **Dated: October 8, 2009**

/s/ Sandra M. Snyder  
UNITED STATES MAGISTRATE JUDGE