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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOSEPH DANNY PROPHET,

1:07-cv-01785-AWI-GSA-PC

Plaintiff,

ORDER REQUIRING PLAINTIFF TO FILE
OPPOSITION OR STATEMENT OF NON-
OPPOSITION TO DEFENDANT KAMEL'S
MOTION TO DISMISS WITHIN THIRTY
DAYS

v.

C/O QUEEN,

Defendant.

(ECF No. 36)

On May 19, 2011, Defendant filed a motion to dismiss. Plaintiff was required to file an opposition or a statement of non-opposition to the motion within twenty-one days, but has not done so. Local Rule 230(1).

Local Rule 230(1) provides that the failure to oppose a motion "may be deemed a waiver of any opposition to the granting of the motion..." The court will deem any failure to oppose Defendant's motion to dismiss as a waiver, and recommend that the motion be granted on that basis.

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 (9th Cir. 1995), cert. denied 516 U.S. 838 (1995) (dismissal upheld even where plaintiff contends he did not receive motion to dismiss, where plaintiff had adequate notice, pursuant to Fed. R. Civ.

1 P. 5(b), and time to file opposition); cf. Marshall v. Gates, 44 F.3d 722, 725 (9th Cir. 1995);
2 Henry v. Gill Industries, Inc., 983 F.2d 943, 949-50 (9th Cir. 1993) (motion for summary
3 judgment cannot be granted simply as a sanction for a local rules violation, without an
4 appropriate exercise of discretion).

5 Accordingly, within thirty days of the date of service of this order, Plaintiff shall file an
6 opposition or statement of non-opposition to the motion to dismiss filed by Defendant. If
7 Plaintiff fails to comply with this order, the Court will deem the failure to respond as a waiver,
8 and recommend that the motion be granted on that basis.

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10 IT IS SO ORDERED.

11 **Dated: June 20, 2011**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE

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