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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

KELLY MORGAN,

1:08-cv-00233-LJO-GSA-PC

Plaintiff,

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

v.

TILTON, et al.,

Defendants.

(Doc. 57.)

On December 22, 2011, defendant Hernandez ("Defendant") filed a motion to dismiss. (Doc. 57.) 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(l).

Local Rule 230(l) 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

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

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

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11 IT IS SO ORDERED.

12 **Dated: April 5, 2012**

/s/ Gary S. Austin  
13 UNITED STATES MAGISTRATE JUDGE  
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