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7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF CALIFORNIA
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10 KELLY MORGAN,

11 Plaintiff,

12 vs.

13 JAMES TILTON, et al.,

14 Defendants.
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1:08-cv-00233-LJO-GSA-PC

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

16 Kelly Morgan ("Plaintiff") is a state prisoner proceeding pro se in this civil rights action
17 pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on
18 February 15, 2008. (Doc. 1.) This case now proceeds on Plaintiff's Third Amended
19 Complaint, filed on July 28, 2011, against defendant Correctional Officer M. Hernandez
20 ("Defendant") for retaliation and obstruction of mail, in violation of the First Amendment.¹
21 (Doc. 45.)

22 On October 30, 2013, Defendant filed a motion for the court to enforce the discovery
23 order and dismiss this case, or in the alternative, to modify the scheduling order. (Doc. 82.)
24 Plaintiff was required to file an opposition or a statement of non-opposition to the motion
25 within twenty-one days, but has not done so. Local Rule 230(l).
26

27 ¹All remaining claims and defendants were dismissed from this action by the Court on October 17, 2011,
28 based on Plaintiff's failure to state a claim. (Doc. 52.)

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

5 Failure to follow a district court's local rules is a proper grounds for dismissal. U.S. v.
6 Warren, 601 F.2d 471, 474 (9th Cir. 1979). Thus, a court may dismiss an action for plaintiff's
7 failure to oppose a motion to dismiss, where the applicable local rule determines that failure to
8 oppose a motion will be deemed a waiver of opposition. See Ghazali v. Moran, 46 F.3d 52 (9th
9 Cir. 1995), cert. denied 516 U.S. 838 (1995) (dismissal upheld even where plaintiff contends he
10 did not receive motion to dismiss, where plaintiff had adequate notice, pursuant to Fed. R. Civ.
11 P. 5(b), and time to file opposition); cf. Marshall v. Gates, 44 F.3d 722, 725 (9th Cir. 1995);
12 Henry v. Gill Industries, Inc., 983 F.2d 943, 949-50 (9th Cir. 1993) (motion for summary
13 judgment cannot be granted simply as a sanction for a local rules violation, without an
14 appropriate exercise of discretion).

15 Accordingly, IT IS HEREBY ORDERED that:

16 1. Within thirty days of the date of service of this order, Plaintiff shall file an
17 opposition or statement of non-opposition to the motion to dismiss filed by Defendant on
18 October 30, 2013; and

19 2. If Plaintiff fails to comply with this order, the court will deem the failure to
20 respond as a waiver, and recommend that the motion be granted on that basis.

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24 IT IS SO ORDERED.

25 Dated: December 6, 2013

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