

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

DOUGAL SAMUELS,

Plaintiff,

v.

PAM AHLIN, et al.,

Defendants.

Case No. 1:10-cv-00585-DAD-EPG (PC)

ORDER REQUIRING PLAINTIFF TO FILE  
OPPOSITION OR STATEMENT OF NON-  
OPPOSITION TO COUNTY OF FRESNO'S  
MOTION TO QUASH SERVICE OF  
PROCESS OR TO DISMISS PLAINTIFF'S  
ACTION IN THE ALTERNATIVE WITHIN  
THIRTY DAYS

Dougal Samuels ("Plaintiff") is a civil detainee proceeding *pro se* and *in forma pauperis* in this civil rights action filed pursuant to 42 U.S.C. § 1983. On January 20, 2017, the County of Fresno (which Plaintiff identified in his complaint as the Fresno County Board of Supervisors) filed a motion to quash service of process or to dismiss Plaintiff's action in the alternative ("the Motion"). (ECF No. 53). Plaintiff was required to file an opposition or a statement of non-opposition to the Motion within twenty-one days (Local Rule 230(l)), but did not do so.

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 and may result in the imposition of sanctions." However, the Court will give Plaintiff an additional thirty days to file an opposition or statement of non-opposition to the Motion. The Court will deem any failure to oppose the Motion as a waiver of any opposition, and may recommend that the Motion be granted on that basis.

Failure to follow a district court's local rules is a proper ground for dismissal. U.S. v.

1 Warren, 601 F.2d 471, 474 (9th Cir. 1979). Thus, a Court may dismiss an action for a plaintiff's  
2 failure to oppose a motion to dismiss, where the applicable local rule determines that failure to  
3 oppose a motion will be deemed a waiver of opposition. See Ghazali v. Moran, 46 F.3d 52 (9th  
4 Cir. 1995), cert. denied 516 U.S. 838 (1995) (dismissal upheld even where plaintiff contends he  
5 did not receive motion to dismiss, where plaintiff had adequate notice, pursuant to Fed. R. Civ. P.  
6 5(b), and time to file opposition); cf. Heinemann v. Satterberg, 731 F.3d 914, 916 (9th Cir. 2013)  
7 (holding that a motion for summary judgment cannot be granted based on a failure to file  
8 opposition, regardless of any local rule to the contrary).

9 Accordingly, IT IS HEREBY ORDERED that:

- 10 1. Within thirty days of the date of service of this order, Plaintiff shall file an  
11 opposition or statement of non-opposition to the Motion filed by the County of  
12 Fresno; and
- 13 2. If Plaintiff fails to comply with this order, the Court will deem the failure to  
14 respond as a waiver of any opposition and may recommend that the Motion be  
15 granted on that basis.

16  
17 IT IS SO ORDERED.

18 Dated: February 28, 2017

19 /s/ Eric P. Gray  
20 UNITED STATES MAGISTRATE JUDGE