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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 DEFENDANTS'
MOTION TO DISMISS WITHIN THIRTY
DAYS

Dougal Samuels ("Plaintiff") is a civil detainee proceeding *pro se* and *in forma pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. On February 5, 2018, real party in interest County of Fresno filed a motion to dismiss on behalf of Andres Borgeas, Sal Quintero, Nathan Magsig, Brian Pacheco, and Buddy Mendes. (ECF Nos. 91-93). Plaintiff was required to file an opposition or a statement of non-opposition to the motion within twenty-one days (Local Rule 230(1)), but did not do so.

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 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 to dismiss.

The Court will deem the failure to oppose the motion to dismiss as a waiver of any opposition, and may recommend that the motion be granted on that basis. Additionally, if

1 Plaintiff fails to oppose the motion or file a statement of non-opposition, the Court may
2 recommend that this case be dismissed for failure to prosecute and failure to comply with a court
3 order.

4 Failure to follow a district court's local rules is a proper ground for dismissal. See, e.g.,
5 U.S. v. Warren, 601 F.2d 471, 474 (9th Cir. 1979). Thus, a Court may dismiss an action for a
6 plaintiff's failure to oppose a motion to dismiss, where the applicable local rule determines that
7 failure to oppose a motion will be deemed a waiver of opposition. See Ghazali v. Moran, 46 F.3d
8 52 (9th Cir. 1995), cert. denied 516 U.S. 838 (1995) (dismissal upheld even where plaintiff
9 contended he did not receive motion to dismiss, where plaintiff had adequate notice, pursuant to
10 Fed. R. Civ. P. 5(b), and time to file opposition); cf. Heinemann v. Satterberg, 731 F.3d 914, 916
11 (9th Cir. 2013) (holding that a motion for summary judgment cannot be granted based on a failure
12 to file opposition, regardless of any local rule to the contrary).

13 Accordingly, IT IS HEREBY ORDERED that:

- 14 1. Within thirty days from the date of service of this order, Plaintiff shall file an
15 opposition or statement of non-opposition to the motion to dismiss; and
- 16 2. If Plaintiff fails to comply with this order, the Court will deem the failure to
17 respond as a waiver of any opposition to the motion to dismiss and may
18 recommend that the motion be granted on that basis. Additionally, the Court may
19 recommend that this case be dismissed for failure to prosecute and failure to
20 comply with a court order.

21
22 IT IS SO ORDERED.

23 Dated: March 14, 2018

24 /s/ Eric P. Gray
25 UNITED STATES MAGISTRATE JUDGE
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