

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

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

DAMIAN T. DOSTER,  
Plaintiff,

vs.

JEFFREY A. BEARD, et al.,  
Defendants.

1:15-cv-01415-DAD-GSA-PC

**ORDER REQUIRING PLAINTIFF TO  
FILE OPPOSITION OR STATEMENT  
OF NON-OPPOSITION TO DEFENDANT  
LEON'S MOTION TO COMPEL  
WITHIN THIRTY DAYS**

**(ECF No. 58.)**

**THIRTY-DAY DEADLINE**

**I. BACKGROUND**

Damian T. Doster ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis with this civil rights action pursuant to 42 U.S.C. § 1983. This case now proceeds with Plaintiff's First Amended Complaint filed on March 25, 2016, against defendants Chief Deputy Warden F. Vasquez, Yard Captain P. Llamas, Sergeant Sarah Leon, and Maintenance Engineer Ric Pavich, on Plaintiff's claim concerning deprivation of hot water and related negligence claims. (ECF No. 13.)

On July 31, 2017, Defendant Leon filed a motion to compel, requesting dismissal of this case for Plaintiff's failure to comply with the court's April 13, 2017, discovery order. (ECF No. 58.) 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*).

1 Local Rule 230(l) provides that the failure to oppose a motion “may be deemed a  
2 waiver of any opposition to the granting of the motion . . .” The court may deem any failure to  
3 oppose Defendant Leon’s motion as a waiver, and recommend that the motion be granted on  
4 that 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 the  
7 plaintiff’s failure to oppose a motion to dismiss, where the applicable local rule determines that  
8 failure to oppose a motion will be deemed a waiver of opposition. See Ghazali v. Moran, 46  
9 F.3d 52 (9th Cir. 1995), cert. denied 516 U.S. 838 (1995) (dismissal upheld even where  
10 plaintiff contends he did not receive motion to dismiss, where plaintiff had adequate notice,  
11 pursuant to Fed. R. Civ. P. 5(b), and time to file opposition). The court may also dismiss this  
12 case for Plaintiff’s failure to comply with the court’s order. See Local Rule 110; Pagtalunan v.  
13 Galaza, 291 F.3d 639, 642 (9th Cir. 2002)

14 Accordingly, IT IS HEREBY ORDERED that:

- 15 1. Within thirty days of the date of service of this order, Plaintiff shall file an  
16 opposition or statement of non-opposition to Defendant Leon’s motion to  
17 compel, filed on July 31, 2017; and
- 18 2. Plaintiff’s failure to comply with this order may result in the dismissal of this  
19 action.

20  
21 IT IS SO ORDERED.

22 Dated: September 29, 2017

23 /s/ Gary S. Austin  
24 UNITED STATES MAGISTRATE JUDGE