

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

MATTHEW V. SALINAS,

Plaintiff,

vs.

KENNETH J. POGUE, et al.,

Defendants.

1:16-cv-00520-DAD-GSA-PC

**ORDER REQUIRING PLAINTIFF TO
FILE OPPOSITION OR STATEMENT OF
NON-OPPOSITION TO MOTION TO
DISMISS FILED BY DEFENDANTS
GOMNESS AND PALMER
(ECF No. 58.)**

THIRTY-DAY DEADLINE

Plaintiff Matthew V. Salinas (“Plaintiff”) is a 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 Third Amended Complaint, filed on January 17, 2018, against defendants K. Gomness and P. Palmer (“Defendants”) in their official capacities for intentional discrimination in violation of the ADA.¹ (ECF No. 44.)

On July 6, 2018, Defendants filed a motion to dismiss the Third Amended Complaint. (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(I).

¹ All other claims and defendants were dismissed from this action by the court on April 27, 2018. (ECF No. 51.)

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 Defendants’ motion to dismiss as a waiver, and recommend that the motion be granted
4 on 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); cf. Marshall v. Gates, 44 F.3d 722,
12 725 (9th Cir. 1995); Henry v. Gill Industries, Inc., 983 F.2d 943, 949-50 (9th Cir. 1993). The
13 court may also dismiss this case for Plaintiff’s failure to comply with the court’s order. See
14 Local Rule 110; Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th Cir. 2002)

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
18 Defendants on July 6, 2018; and
- 19 2. Plaintiff’s failure to comply with this order will result in a recommendation that
20 this case be dismissed.

21 IT IS SO ORDERED.
22

23 Dated: August 9, 2018

/s/ Gary S. Austin
24 UNITED STATES MAGISTRATE JUDGE
25
26
27
28