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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

WILLIAM J. GRADFORD,

Plaintiff,

v.

STANISLAUS PUBLIC SAFETY
CENTER, et al.,

Defendants.

1:17-cv-01248-DAD-GSA-PC

**ORDER REQUIRING PLAINTIFF TO
FILE OPPOSITION OR STATEMENT OF
NON-OPPOSITION TO DEFENDANT
FLORES’S MOTION TO DISMISS,
WITHIN TWENTY-ONE DAYS**

(ECF No. 54.)

William J. Gradford (“Plaintiff”) is a former prisoner proceeding *pro se* and *in forma pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. This case now proceeds against defendant Sergeant Flores¹ (“Defendant”) for use of excessive force in violation of the Eighth Amendment.

On September 8, 2020, defendant Flores filed a motion to dismiss. (ECF No. 54.) 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 Sued as Sergeant Florres.

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 may 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 the 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 appropriate
14 exercise of discretion). The court may also dismiss this case for Plaintiff’s failure to comply with
15 the court’s order. See Local Rule 110; Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th Cir. 2002)

16 Accordingly, IT IS HEREBY ORDERED that:

- 17 1. Within **twenty-one days** of the date of service of this order, Plaintiff shall file an
18 opposition, or statement of non-opposition, to the motion to dismiss filed by
19 Defendant Flores on September 8, 2020; and finally
- 20 2. Plaintiff’s failure to comply with this order may result in the dismissal of this
21 action.

22
23 IT IS SO ORDERED.

24 Dated: October 9, 2020

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