

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

DANIEL LEE THORNBERRY,

Plaintiff,

V.

HAROLD TATE,

Defendant.

Case No. 1:19-cv-00825-AWI-EPG (PC)

**ORDER REQUIRING PLAINTIFF TO FILE  
OPPOSITION OR STATEMENT OF NON-  
OPPOSITION TO DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT**

Daniel Lee Thornberry (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action filed pursuant to 42 U.S.C. § 1983, which includes a state law claim. On October 8, 2021, Defendant filed a motion for summary judgment. (ECF No. 42). 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 file an opposition or to file a statement of no opposition may be deemed a waiver of any opposition to the granting of the motion and may result in the imposition of sanctions.” While a motion for summary judgment cannot be granted by default, Heinemann v. Satterberg, 731 F.3d 914, 916 (9th Cir. 2013), the Court does have other options when a party fails to respond. For example, if Plaintiff fails to respond, the Court may treat the facts asserted by Defendant as “undisputed for purposes of the motion.” Fed. R. Civ. P. 56(e)(2). Alternatively, if Plaintiff fails to oppose the motion or file a statement of non-opposition, the Court may recommend that this case be dismissed for failure to prosecute and

failure to comply with a court order.

However, the Court will not impose any sanctions or treat the facts asserted by Defendant as undisputed at this time. Instead, the Court will give Plaintiff one more opportunity to file a response.

Accordingly, based on the foregoing, IT IS HEREBY ORDERED that:

1. Within thirty days from the date of service of this order, Plaintiff shall file an opposition or a statement of non-opposition to Defendant's motion for summary judgment.
2. If Plaintiff fails to comply with this order, in ruling on Defendant's motion for summary judgment the Court may treat the facts asserted by Defendant in his motion for summary judgment as undisputed. Alternatively, the Court may recommend that this case be dismissed for failure to prosecute and failure to comply with a court order.

IT IS SO ORDERED.

Dated: **November 18, 2021**

/s/ *Eric P. Groj*  
UNITED STATES MAGISTRATE JUDGE