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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANDRE RIDER,

Plaintiff,

No. 2: 10-cv-0662 KJN P

vs.

J. WALKER, et al.,

Defendants.

ORDER AND

FINDINGS AND RECOMMENDATIONS

_____ /

Plaintiff is a state prisoner proceeding without counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. On April 27, 2011, defendants Gyaami and Paulsen filed a motion to dismiss for failure to exhaust administrative remedies and for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b) and 12(b)(6).

Local Rule 230(l) provides in part: “Failure of the responding party to file written opposition or to file a statement of no opposition may be deemed a waiver of any opposition to the granting of the motion...” On December 6, 2010, plaintiff was advised of the requirement for filing an opposition to the motion and that failure to oppose such a motion may be deemed a waiver of opposition to the motion.

Local Rule 110 provides that failure to comply with the Local Rules “may be grounds for imposition of any and all sanctions authorized by statute of Rule or within the

1 inherent power of the Court.” In the order filed December 6, 2010, plaintiff was advised that
2 failure to comply with the Local Rules may result in a recommendation that the action be
3 dismissed.

4 On June 2, 2011, plaintiff was granted thirty days to file an opposition to
5 defendants’ motion to dismiss. The June 2, 2011 order warned plaintiff that his failure to file an
6 opposition would be deemed a statement of non-opposition and would result in a
7 recommendation that defendants’ motion be granted. Thirty days passed and plaintiff did not file
8 an opposition or otherwise respond to the June 2, 2011 order.

9 Accordingly, plaintiff’s failure to oppose should be deemed a waiver of
10 opposition to the granting of the motion. In the alternative, the court has reviewed the motion
11 and finds that it has merit.

12 Accordingly, IT IS HEREBY ORDERED that the Clerk of Court shall assign a
13 district judge to this action; and

14 IT IS HEREBY RECOMMENDED that the motion to dismiss filed April 27,
15 2011 by defendants Gyaami and Paulsen (Dkt. No. 25) be granted.

16 These findings and recommendations are submitted to the United States District
17 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-
18 one days after being served with these findings and recommendations, any party may file written
19 objections with the court and serve a copy on all parties. Such a document should be captioned
20 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the
21 objections shall be filed and served within fourteen days after service of the objections. The
22 parties are advised that failure to file objections within the specified time may waive the right to
23 appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

24 DATED: July 13, 2011

25 
KENDALL J. NEWMAN
26 UNITED STATES MAGISTRATE JUDGE