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

JERRY W. BAKER,

Plaintiff,

No. 2:10-cv-1208 GEB KJN P

vs.

C/O J. SMITH, et al.,

Defendants.

ORDER

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On July 19, 2012, defendants renewed their October 12, 2011 motion for summary judgment pursuant to Federal Rule of Civil Procedure 56, and this court’s July 18, 2012 order. Despite service by mail on plaintiff’s last known address (dkt. no. 95 at 1), plaintiff has not opposed the motion.

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 August 25, 2010, plaintiff was advised of the requirements for filing an opposition to a motion and that failure to oppose such a motion may be deemed a waiver of opposition to the motion. See Rand v. Rowland, 154 F.3d 952, 957 (9th Cir. 1998) (en banc), and Klinge v. Eikenberry, 849 F.2d 409, 411-12 (9th Cir. 1988). On July 18, 2012, the court advised the parties that the Ninth Circuit required Rand notice to issue contemporaneous

1 with the motion for summary judgment. (Dkt. No. 91, citing Woods v. Carey, 684 F.3d 934 (9th  
2 Cir. 2012). Plaintiff was provided a copy of the Rand notice with the court's July 18, 2012 order.  
3 (Dkt. No. 91 at 4.) On July 19, 2012, defendants provided plaintiff with the Rand notice  
4 contemporaneous with the filing of the instant motion. (Dkt. No. 92-1.)

5 Local Rule 110 provides that failure to comply with the Local Rules "may be  
6 grounds for imposition of any and all sanctions authorized by statute or Rule or within the  
7 inherent power of the Court." In the order filed August 25, 2010, plaintiff was also advised that  
8 failure to comply with the Local Rules may result in a recommendation that the action be  
9 dismissed.

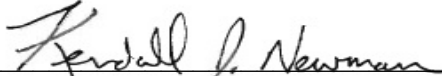
10 Finally, Rule 41(b) of the Federal Rules of Civil Procedure provides:

11 **Involuntary Dismissal; Effect.** If the plaintiff fails to prosecute  
12 or to comply with these rules or a court order, a defendant may  
13 move to dismiss the action or any claim against it. Unless the  
14 dismissal order states otherwise, a dismissal under this subdivision  
15 (b) and any dismissal not under this rule--except one for lack of  
16 jurisdiction, improper venue, or failure to join a party under Rule  
17 19--operates as an adjudication on the merits.

18 Id.

19 Good cause appearing, IT IS HEREBY ORDERED that, within thirty days of the  
20 date of this order, plaintiff shall file an opposition, if any, to the motion for summary judgment.  
21 Failure to file an opposition will be deemed as consent to have the: (a) pending motion granted;  
22 (b) action dismissed for lack of prosecution; and (c) action dismissed based on plaintiff's failure  
23 to comply with these rules and a court order. Such failure shall result in a recommendation that  
24 this action be dismissed pursuant to Federal Rule of Civil Procedure 41(b).

25 DATED: August 30, 2012

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KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE