

1
2
3
4
5
6
7 UNITED STATES DISTRICT COURT
8 FOR THE EASTERN DISTRICT OF CALIFORNIA
9

10 DANIEL THOMAS HARVEY,

11 Plaintiff,

12 v.

13 ANDREW EISSINGER, CHARLES
14 DUKE, SHANNON LANEY, and JAKE
HERMINGHAUS,

15 Defendants.
16

No. 2:10-cv-1653-KJM-EFB PS

ORDER TO SHOW CAUSE

17 On November 27, 2013, the remaining defendants filed a motion to dismiss the fifth
18 amended complaint for failure to state a claim.¹ ECF No. 97. Defendants noticed the hearing on
19 that motion for January 8, 2014. *Id.*

20 Court records reflect that plaintiff has not filed an opposition or statement of non-
21 opposition to the motion to dismiss. Local Rule 230(c) provides that opposition to the granting of
22 a motion, or a statement of non-opposition thereto, must be served upon the moving party, and
23 filed with this court, no later than fourteen days preceding the noticed hearing date or, in this
24 instance, by December 26, 2013. *See* Fed. R. Civ. P. 6(a). Local Rule 230(c) further provides
25 that “[n]o party will be entitled to be heard in opposition to a motion at oral arguments if
26 opposition to the motion has not been timely filed by that party.”

27
28 ¹ This case, in which plaintiff is proceeding pro se, is before the undersigned pursuant to
28 U.S.C. § 636(b)(1) and Eastern District of California Local Rule 302(c)(21).

1 Local Rule 183, governing persons appearing in pro se, provides that failure to comply
2 with the Federal Rules of Civil Procedure and Local Rules may be grounds for dismissal,
3 judgment by default, or other appropriate sanctions. Local Rule 110 provides that failure to
4 comply with the Local Rules “may be grounds for imposition by the Court of any and all
5 sanctions authorized by statute or Rule or within the inherent power of the Court.” *See also*
6 *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (“Failure to follow a district court’s local rules
7 is a proper ground for dismissal.”). Pro se litigants are bound by the rules of procedure, even
8 though pleadings are liberally construed in their favor. *King v. Atiyeh*, 814 F.2d 565, 567 (9th
9 Cir. 1987).

10 Accordingly, good cause appearing, it is hereby ORDERED that:

11 1. The hearing on defendants’ motion to dismiss (ECF No. 97) is continued to January
12 29, 2014.

13 2. Plaintiff shall show cause, in writing, no later than January 15, 2014, why sanctions
14 should not be imposed for failure to timely file an opposition or a statement of non-opposition to
15 the pending motion.

16 3. Plaintiff shall file an opposition to the motion, or a statement of non-opposition thereto,
17 no later than January 15, 2014.

18 4. Failure of plaintiff to file an opposition to the motion will be deemed a statement of
19 non-opposition thereto, and may result in a recommendation that this action be dismissed for lack
20 of prosecution and/or for failure to comply with court orders and this court’s Local Rules. *See*
21 Fed. R. Civ. P. 41(b); Local Rule 110.

22 5. Defendants may file a reply to plaintiff’s opposition, if any, on or before January 22,
23 2014.

24 DATED: December 30, 2013.

25 
EDMUND F. BRENNAN
26 UNITED STATES MAGISTRATE JUDGE
27
28