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

LEE JAMES BAILEY

Plaintiff,

No. 2:10-cv-02295 JAM KJN P

vs.

FAIRFIELD POLICE DEPARTMENT,

et al.,

Defendants.

ORDER

_____ /

On September 9, 2011, defendants filed a motion to dismiss this civil rights action, pursuant to Federal Rule of Civil Procedure 12(b)(6),¹ and certificate of service demonstrating that the motion was served on plaintiff on the same date. (Dkt. Nos. 22, 23.) Plaintiff, who is incarcerated at Solano County Jail, has not responded to the motion, and the deadline for doing so has passed.²

¹ Defendants’ noticed motion was taken off calendar pursuant to Local Rule 230(l), which provides in pertinent part that “[a]ll motions, except motions to dismiss for lack of prosecution, filed in actions wherein one party is incarcerated and proceeding in propria persona, shall be submitted upon the record without oral argument unless otherwise ordered by the Court.”

² Local Rule 230(l) provides that a party’s “[o]pposition, if any, to the granting of the motion shall be served and filed by the responding party not more than twenty-one (21), days


1 Local Rule 230(l) provides that “[f]ailure of the responding party to file written
2 opposition or to file a statement of no opposition may be deemed a waiver of any opposition to
3 the granting of the motion.” Local Rule 110 provides that failure to comply with the Local Rules
4 “may be grounds for imposition of any and all sanctions authorized by statute or Rule or within
5 the inherent power of the Court.” In the order filed February 15, 2011, plaintiff was advised that
6 failure to comply with the Local Rules may result in a recommendation that this action be
7 dismissed. (Dkt. No. 10 at 5.)

8 In addition, Federal Rule of Civil Procedure 41(b) provides:

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

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

23 DATED: October 19, 2011

24 
25 KENDALL J. NEWMAN
26 UNITED STATES MAGISTRATE JUDGE

27 bail2295.nooppo.kjn

28 _____
29 after the date of service of the motion.”