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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

REX CHAPPELL,

Plaintiff,

v.

DUC, et al.,

Defendants.

No. 2:10-cv-2676 KJM AC P

ORDER

On September 16, 2013, defendants filed a motion for summary judgment, ECF No. 63, pursuant to Federal Rule of Civil Procedure 56. 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 . . . .” By Order filed on January 20, 2012, ECF No. 27, plaintiff was advised of the requirements 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. See Rand v. Rowland, 154 F.3d 952, 957 (9th Cir. 1998) (en banc), cert. denied, 527 U.S. 1035 (1999); Klinge v. Eikenberry, 849 F.2d 409 (9th Cir. 1988). In addition, defendants provided the concurrent Rand notice, ECF No. 63 at 2, required by Woods v. Carey, 684 F.3d 934 (9th Cir. 2012), setting forth the requirements to oppose a motion for summary judgment.

Local Rule 110 provides that failure to comply with the Local Rules “may be grounds for

1 imposition of any and all sanctions authorized by statute or Rule or within the inherent power of  
2 the Court.” In the order filed January 12, 2012, plaintiff was advised that failure to comply with  
3 the Local Rules may result in a recommendation that the action be dismissed. The Ninth Circuit  
4 has recently held that a district court is prohibited from granting a summary judgment motion  
5 solely based on a failure to oppose the motion notwithstanding any local rule suggesting  
6 otherwise. Heinemann v. Satterberg, 731 F. 3d 914, 916 (9th Cir. 2013). Nevertheless, a “failure  
7 to respond to a fact asserted in the motion permits a court to ‘consider the fact undisputed for  
8 purposes of the motion.’” Id. at 917 (quoting Fed. R. Civ. P. 56(e)(2)).

9 Good cause appearing, IT IS HEREBY ORDERED that, within thirty days of the date of  
10 this order, plaintiff shall file an opposition, if any, to defendants’ motion for summary judgment.  
11 Failure to file an opposition, properly addressing defendants’ assertions of fact, will result in the  
12 facts asserted by the motion to be considered by the court as undisputed for purposes of  
13 adjudicating the motion.

14 DATED: March 10, 2014

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16 ALLISON CLAIRE  
17 UNITED STATES MAGISTRATE JUDGE  
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