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

MARTIN SALCIDO,

Plaintiff,

No. 2:11-cv-0611 LKK KJN P

vs.

D.K. SISTO, et al.,

Defendants.

ORDER

\_\_\_\_\_ /

Plaintiff is a state prisoner proceeding without counsel with a civil rights action pursuant to 42 U.S.C. § 1983. On July 19, 2011, defendant Rice filed a motion to dismiss. On May 20, 2011, the court advised plaintiff of the requirements for opposing a motion pursuant to Rule 56 of the Federal Rules of Civil Procedure. 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). In that same order, plaintiff was advised of the requirements for filing an opposition to the pending motion and that failure to oppose such a motion would be deemed as consent to have the: (a) pending motion granted; (b) action dismissed for lack of prosecution; and (c) action dismissed based on plaintiff's failure to comply with these rules and a court order.

On August 24, 2011, plaintiff was ordered to file an opposition or a statement of non-opposition to the pending motion within thirty days. In the same order, plaintiff was

1 informed that failure to file an opposition would result in a recommendation that this action  
2 be dismissed pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. The thirty day  
3 period has now expired and plaintiff has not responded to the court's order.

4           However, it appears plaintiff's name was misspelled when this case was opened.  
5 Thus, the Clerk of the Court is directed to change the records in CM/ECF from Martin Salado to  
6 Martin Salcido. Although plaintiff's name was misspelled, the inmate identification number is  
7 accurate, and plaintiff timely responded to the court's April 5, 2011 order. Defendant Rice  
8 properly spelled plaintiff's name in the July 19, 2011 motion to dismiss. But in an abundance of  
9 caution, the Clerk of the Court is directed to re-serve a copy of the court's August 24, 2011 order  
10 on plaintiff, and plaintiff will be granted 28 days from the date of this order to file an opposition  
11 to defendant Rice's motion to dismiss.

12           For the foregoing reasons, IT IS HEREBY ORDERED that:


13           1. The Clerk of the Court is directed to:

14                   a. Change plaintiff's name from Martin Salado to Martin Salcido in the  
15 court's CM/ECF records; and

16                   b. Re-serve a copy of this court's August 24, 2011 order on plaintiff; and

17           2. Plaintiff is granted 28 days from the date of this order to file an opposition to  
18 defendant Rice's motion to dismiss.

19 DATED: September 26, 2011

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22 KENDALL J. NEWMAN  
23 UNITED STATES MAGISTRATE JUDGE

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