

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHARLEY McMURTRY,
Plaintiff,
v.
HU, et al.,
Defendants.

No. 2:12-cv-00103 DAD P

ORDER

Plaintiff is a state prisoner¹ proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff has consented to magistrate judge jurisdiction over this action for all purposes pursuant to 28 U.S.C. § 636(c), and Local Rule 305(a). (See ECF No. 6.)

On October 2, 2014, this case was reopened to accord plaintiff additional time to respond to the motion for summary judgment filed by defendants on May 29, 2014. (See ECF No. 44.) Plaintiff was originally accorded thirty days to file and serve his opposition or statement of non-opposition to the motion. That deadline expired on November 1, 2014, a Saturday, and therefore

¹ Review of the Inmate Locator website operated by the California Department of Corrections and Rehabilitation (CDCR) indicates that plaintiff is no longer incarcerated under the authority of the CDCR. See <http://inmatelocator.cdcr.ca.gov/search.aspx>. See also Fed. R. Evid. 201 (a court may take judicial notice of facts that are capable of accurate determination by sources whose accuracy cannot reasonably be questioned).

1 was automatically extended until Monday, November 3, 2014. See Fed. R. Civ. P. 6(a)(1)(C).
2 The effective filing deadline has now passed and plaintiff has not filed an opposition or statement
3 of non-opposition to the pending motion for summary judgment, or otherwise communicated with
4 the court.

5 On April 1, 2013, plaintiff was advised of the requirements for filing an opposition to a
6 motion for summary judgment, and informed that failure to oppose such motion may be deemed a
7 waiver of opposition thereto. (See ECF No. 18.) See Rاند v. Rowland, 154 F.3d 952, 957 (9th
8 Cir. 1998) (en banc), and Klingeले v. Eikenberry, 849 F.2d 409, 411-12 (9th Cir. 1988). That
9 order also advised plaintiff that failure to comply with the Local Rules may result in a
10 recommendation that this action be dismissed.²

11 Local Rule 230(l) provides that failure to timely respond to a motion may be deemed a
12 waiver of opposition. See Local Rule 230(l). In addition, Local Rule 110 provides that failure to
13 comply with the Local Rules or any order of this court “may be grounds for imposition of any and
14 all sanctions authorized by statute or Rule or within the inherent power of the Court.” Finally,
15 Rule 41(b), Federal Rules of Civil Procedure, authorizes the involuntary dismissal of an action
16 due to a plaintiff’s failure to prosecute, or to comply with the Federal Rules or a court order.

17 Good cause appearing, IT IS HEREBY ORDERED that, within fourteen (14) days after
18 the filing date of this order, plaintiff shall file an opposition, if any, to the pending motion for

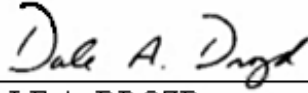
19 ////

20 ////

21 _____
22 ² Plaintiff has had substantial notice of the grounds on which defendants move for summary
23 judgment. The motion was initially filed and served on February 10, 2014, as an unenumerated
24 Rule 12(b) motion to dismiss. (See ECF No. 32.) Plaintiff did not oppose that motion, despite
25 the court’s granting of an extension of time within which to do so. (See ECF No. 36.) However,
26 on April 29, 2014, pursuant to the Ninth Circuit Court of Appeals’ decision in Albino v. Baca,
27 747 F.3d 1162 (9th Cir. 2014) (en banc), this court denied defendants’ motion to dismiss without
28 prejudice to its renewal as a motion for summary judgment. (See ECF No. 38.) Defendants filed
the instant motion on May 29, 2014. (ECF No. 39.) Plaintiff did not respond until August 28,
2014, after judgment was entered in this case, following the court’s issuance of an order to show
cause on July 1, 2014. At that time, the court granted plaintiff’s motion for reconsideration, re-
opened this case and accorded plaintiff an additional thirty days to respond to the pending motion.
Plaintiff has again failed to file a timely opposition to the pending motion.

1 summary judgment. Failure to timely file an opposition will be deemed as a statement of non-
2 opposition and shall result in the dismissal of this action without prejudice pursuant Federal Rule
3 of Civil Procedure 41(b).

4 Dated: November 10, 2014

5 

6 _____
7 DALE A. DROZD
8 UNITED STATES MAGISTRATE JUDGE

9 DAD:4
10 mcmu0103.46.osc.

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28