1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF CALIFORNIA 10 11 ROBERT BENYAMINI, No. 2:13-cv-735-KJM-EFB P 12 Plaintiff, 13 **ORDER** v. 14 M. SWETT, et al., 15 Defendants. 16 17 Plaintiff is a former state prisoner proceeding without counsel in an action brought under 18 42 U.S.C. § 1983. Defendants move to declare plaintiff a vexatious litigant and have noticed the 19 motion to be heard on April 23, 2014. ECF Nos. 22, 23. Defendants originally noticed the 20 motion for April 9, 2014. ECF No. 20. 21 On March 21, 2014, plaintiff filed a motion for a "change of calendar." ECF No. 24. In 22 that filing, plaintiff states that he cannot attend a hearing on April 9, 2014 because of a scheduling 23 conflict and that he cannot afford to travel to two places in one day. He further states that 24 because he is on parole, he must receive a "pass" to travel to Sacramento for a hearing and 25 requests that he be allowed to appear telephonically. Because defendants' motion is now noticed 26 to be heard on April 23, plaintiff's request to appear telephonically at the April 9 hearing is 27 denied as moot. 28 ///// 1

In addition, plaintiff requests permission to file documents with the court electronically. ECF No. 24. This request is also denied. Local Rule 133(b)(2) provides that, "Any person appearing pro se may **not** utilize electronic filing except with the permission of the assigned Judge or Magistrate Judge. *See* E.D. Cal. L.R. 133(b)(3). All pro se parties shall file and serve paper documents as required by applicable Federal Rules of Civil or Criminal Procedure or by these Rules." Plaintiff's request does not provide any reasons for making an exception to the Local Rule. His request is denied.

Moreover, court records reflect that plaintiff has filed neither an opposition nor a statement of non-opposition to the motion. Local Rule 230(c) provides that opposition to the granting of a motion, or a statement of non-opposition thereto, must be served upon the moving party, and filed with this court, no later than fourteen days preceding the noticed hearing date or, in this instance, by April 9, 2014. Local Rule 230(c) further provides that "[n]o party will be entitled to be heard in opposition to a motion at oral arguments if opposition to the motion has not been timely filed by that party."

Local Rule 110 provides that failure to comply with the Local Rules "may be grounds for imposition by the Court of any and all sanctions authorized by statute or Rule or within the inherent power of the Court." *See also Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) ("Failure to follow a district court's local rules is a proper ground for dismissal.").

Accordingly, good cause appearing, IT IS HEREBY ORDERED that:

- 1. The hearing on defendants' motion to declare plaintiff a vexatious litigant is continued to May 21, 2014, at 10:00 a.m. in Courtroom No. 8.
- 2. Plaintiff shall show cause, in writing, no later than April 30, 2014, why sanctions should not be imposed for failure to timely file an opposition or a statement of non-opposition to the pending motion.
- 3. Plaintiff shall file an opposition to the motion, or a statement of non-opposition thereto, no later than April 30, 2014.

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1	4. Failure of plaintiff to file an opposition to the motion will be deemed a statement of
2	non-opposition thereto, and may result in a recommendation that this action be dismissed for lack
3	of prosecution and/or for failure to comply with court orders and this court's Local Rules. See
4	Fed. R. Civ. P. 41(b).
5	5. Defendants may file a reply to plaintiff's opposition, if any, on or before May 7,
6	2014.
7	6. Plaintiff's motion for a "change of calendar" (ECF No. 24) is denied.
8	SO ORDERED.
9	DATED: April 16, 2014.
10	EDMUND F. BRENNAN
11	UNITED STATES MAGISTRATE JUDGE
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