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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ARTHUR EUGENE JOHNSON,  
Petitioner,  
v.  
BRIAN DUFFY, Warden,  
Respondent.

No. 2:13-cv-01873-KJM-KJN P

ORDER

On November 5, 2013, respondent filed a motion to dismiss this action, on the ground that the petition is successive within the meaning of 28 U.S.C. § 2244(b), and was filed without authorization from the Ninth Circuit Court of Appeals. See 28 U.S.C. § 2244(b)(3)(A). Because petitioner is represented by counsel, the motion was set for hearing before this court. The hearing, originally scheduled for January 9, 2014, was reset for February 13, 2014.

Petitioner has not opposed the motion, and the deadline for timely filing an opposition has passed. Petitioner’s opposition was due on or before January 30, 2014. See Local Rule 230(c).<sup>1</sup>

<sup>1</sup> Local Rule 230(c) provides in pertinent part:

Opposition and Non-Opposition. Opposition, if any, to the granting of the motion shall be in writing and shall be filed and served not less than fourteen (14) days preceding the noticed (or continued) hearing date. A responding party who has no opposition to the granting of the motion shall serve and file a statement to that effect, specifically designating the motion in question. No party will be

1 Local Rule 230(l) provides in part: “Failure 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  
4 Rules “may be grounds for imposition of any and all sanctions authorized by statute or Rule or  
5 within the inherent power of the Court.” Rule 41(b), Federal Rules of Civil Procedure, provides  
6 for the involuntary dismissal of an action for failure to prosecute or to comply with court rules or  
7 orders, and may act as an adjudication of the merits.

8 Pursuant to these authorities, and good cause appearing, IT IS HEREBY ORDERED that:

9 1. Petitioner’s counsel shall, within fourteen days after the filing date of this order, show  
10 cause for failing to timely file and serve an opposition, or statement of no opposition, to the  
11 pending motion to dismiss, AND, if opposing the motion, shall file and serve such opposition.  
12 Failure to file an opposition will be deemed as petitioner’s consent to the dismissal of this action.


13 2. The hearing on this matter, currently scheduled for February 13, 2014, is vacated  
14 pending further order of this court.

15 3. Failure of petitioner’s counsel to timely and fully respond to this order shall result in  
16 the issuance of an order to show cause why sanctions should not be imposed on counsel.

17 SO ORDERED.

18 Dated: January 31, 2014

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KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

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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.