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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TRACY FIDEL ALFORD,
Plaintiff,
v.
DR. MA,
Defendant.

No. 2:13-cv-2493 KJM KJN P

ORDER

On March 25, 2015, defendant filed a motion for summary judgment pursuant to Federal Rule of Civil Procedure 56. (ECF No. 26.) Plaintiff failed to file an opposition to the motion. Accordingly, on May 12, 2015, the undersigned filed an order directing plaintiff to file an opposition within 30 days or else face dismissal of the action for lack of prosecution, for failure to comply with the court’s order, and for failure to comply with the Local Rules of the Eastern District of California.

By prior order filed March 18, 2014 (ECF No. 15), plaintiff was advised of the requirements for filing an opposition to a 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); Klinge v. Eikenberry, 849 F.2d 409, 411-12 (9th Cir. 1988). Defendant also served plaintiff with a notice, pursuant to Rand and Klinge, regarding the requirements for opposing a motion for summary judgment. (See ECF No. 26 at 29-32.)

1 Local Rule 230(1) 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”

4 Local Rule 110 provides that failure to comply with the Local Rules “may be grounds for
5 imposition of any and all sanctions authorized by statute or Rule or within the inherent power of
6 the Court.” In the order filed March 18, 2014, plaintiff was also advised that failure to comply
7 with the Local Rules may result in a recommendation that the action be dismissed.

8 Finally, Rule 41(b) of the Federal Rules of Civil Procedure provides:

9 **Involuntary Dismissal; Effect.** If the plaintiff fails to prosecute or
10 to comply with these rules or a court order, a defendant may move
11 to dismiss the action or any claim against it. Unless the dismissal
12 order states otherwise, a dismissal under this subdivision (b) and
any dismissal not under this rule--except one for lack of
jurisdiction, improper venue, or failure to join a party under Rule
19--operates as an adjudication on the merits.

13 Id.

14 On June 1, 2015, plaintiff filed a one-page document entitled “Request to Amend the
15 Complaint.” It provides, in its entirety, as follows:

16 Plaintiff is a California state prisoner proceeding without counsel in
17 an action brought under 42 U.S.C. 1983.

18 On March 25, 2015, defendants filed a motion for summary
19 judgment pursuant to Federal Rule of Civil Procedure 56. Plaintiff
has not opposed the motion.

20 It is plaintiff’s wish to opposed defendants motion for summary
21 judgment.

22 Therefore pursuant to Federal Rules of Civil Procedure 15(2),
Plaintiff respectfully request to amend the complaint.

23 (ECF No. 28.)

24 Plaintiff is informed that in order to oppose defendant’s motion for summary judgment, he
25 must file an opposition that satisfies the requirements of Federal Rule of Civil Procedure 56 and
26 Local Rule 260. Plaintiff has not made a showing as to how amending the operative complaint
27 will satisfy these requirements. Accordingly, the court declines to grant plaintiff leave to file an
28 amended complaint.

1 Plaintiff will be given one final opportunity to file an opposition to the pending motion for
2 summary judgment. Plaintiff is cautioned that it is extremely unlikely that any further extensions
3 of time will be granted.

4 Good cause appearing, IT IS HEREBY ORDERED that:

5 1. Within thirty days from the date of this order, plaintiff shall file an opposition, if any,
6 to the motion for summary judgment. Failure to file an opposition will be deemed as consent to
7 have the: (a) action dismissed for lack of prosecution; and (b) action dismissed based on
8 plaintiff's failure to comply with these rules and a court order. Such failure shall result in a
9 recommendation that this action be dismissed pursuant to Federal Rule of Civil Procedure 41(b).

10 2. Plaintiff's motion to file an amended complaint (ECF No. 28) is denied without
11 prejudice.

12 Dated: June 23, 2015

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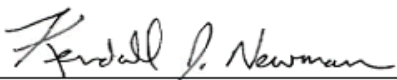
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KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE