

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

GREGORY GOODS,
Plaintiff,
v.
JEFFERY MCCUMBER, et al.,
Defendants.

No. 2:14-cv-2580 TLN KJN P

ORDER

Plaintiff is a state prisoner, proceeding without counsel. On March 15, 2018, plaintiff renewed his motion for jury trial, and filed a motion for extension of time to respond to defendants’ motion to dismiss. However, in his motion for extension of time, plaintiff claims the motion to dismiss was erroneously filed apparently in light of plaintiff invoking his Seventh Amendment right to a jury trial. Plaintiff is advised that his request for a jury trial has been duly noted, and he is not required to continue to request a trial by jury. However, plaintiff is advised that his case will proceed to jury trial only if the court denies defendants’ motion to dismiss, and any dispositive motions filed by defendants are denied as well. Fed. R. Civ. P. 56. Defendants are entitled to file a motion to dismiss under Rule 12 of the Federal Rules of Civil Procedure. Plaintiff is required to file an opposition; indeed, failure to oppose the motion may result in the court granting the motion, or may result in the dismissal of the action based on plaintiff’s failure to file an opposition. Local Rule 230(l) (“Failure of the responding party to file written

1 opposition or to file a statement of no opposition may be deemed a waiver of any opposition to
2 the granting of the motion”).¹

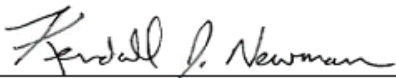
3 Good cause appearing, IT IS HEREBY ORDERED that:

4 1. Plaintiff’s motion for trial by jury (ECF No. 54) is duly noted, and plaintiff shall
5 refrain from filing further motions for jury trial;

6 2. Plaintiff’s motion for an extension of time (ECF No. 55) is granted; and

7 2. Plaintiff is granted thirty days from the date of this order in which to file an opposition
8 to the motion to dismiss. Defendants’ reply, if any, shall be filed within seven days thereafter.

9 Dated: March 19, 2018

10 
11 KENDALL J. NEWMAN
12 UNITED STATES MAGISTRATE JUDGE

13 /good2580.36

14
15
16
17
18
19
20
21
22 _____
23 ¹ Rule 41(b) of the Federal Rules of Civil Procedure provides:

24 **Involuntary Dismissal; Effect.** If the plaintiff fails to prosecute or
25 to comply with these rules or a court order, a defendant may move
26 to dismiss the action or any claim against it. Unless the dismissal
27 order states otherwise, a dismissal under this subdivision (b) and
28 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.

Id.