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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

NORMAN RANKINS,
Plaintiff,
v.
ALEXANDER LIU,
Defendants.

No. 2:15-cv-1164 KJM DB P

FINDINGS & RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with a civil rights action pursuant to 42 U.S.C. § 1983. On October 18, 2018 defendant filed a motion for summary judgment pursuant to Rules 12(b)(6) and 56 of the Federal Rules of Civil Procedure. (ECF No. 53.) Plaintiff has not filed an opposition to the motion.

“A district court may not grant a motion for summary judgment simply because the nonmoving party does not file opposing material, even if the failure to oppose violates a local rule.” Brydges v. Lewis, 18 F.3d 651, 652 (9th Cir. 1994) (citing Henry v. Gill Industries, Inc., 983 F.2d 943, 950 (9th Cir. 1993)). However, where a local rule “does not require, but merely permits the court to grant a motion for summary judgment, the district court has discretion to determine whether noncompliance should be deemed consent to the motion.” Brydges, 18 F.3d at 652.

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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” On March 16, 2016, plaintiff was advised of the requirements
4 for filing an opposition to a dispositive pretrial motion and that failure to oppose such a motion
5 may be deemed a waiver of opposition to the motion. (ECF No. 19.)

6 After the time for filing an opposition expired, plaintiff was directed to show cause in
7 writing why this case should not be dismissed for his failure to file an opposition to defendant’s
8 motion for summary judgment. (ECF No. 63.) Shortly thereafter plaintiff moved for an
9 extension of time to file an opposition. (ECF No. 64.) The court granted plaintiff an additional
10 thirty days to file an opposition. (ECF No. 65.) Plaintiff did not file an opposition or request
11 additional time to file an opposition. Thereafter, the court issued a second order to show cause
12 directing plaintiff to file an opposition or explain in writing why this case should not be dismissed
13 for failure to file an opposition within fourteen days. (ECF No. 66.) Those fourteen days have
14 now elapsed, and plaintiff has not filed an opposition, requested an extension of time, or
15 otherwise responded to the order to show cause. Accordingly, plaintiff’s failure to oppose should
16 be deemed a waiver of opposition to the granting of the motion.

17 In accordance with the above, IT IS HEREBY RECOMMENDED that defendants’
18 motion for summary judgment (ECF No. 53) be granted.

19 These findings and recommendations are submitted to the United States District Judge
20 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
21 after being served with these findings and recommendations, any party may file written
22 objections with the court and serve a copy on all parties. Such a document should be captioned
23 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the
24 objections shall be filed and served within fourteen days after service of the objections.

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The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: March 8, 2019



DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

DLB:12
DLB:1/Orders/Prisoner/Civil.Rights/rank1164.46dmsj