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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES DAVENPORT,
Plaintiff,
v.
GOMEZ, et al.,
Defendants.

No. 2:16-cv-1739 JAM KJN P

ORDER

On September 28, 2018, defendants filed a motion for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c) based on plaintiff’s alleged failure to exhaust his administrative remedies prior to bringing suit, apparent from the face of his complaint and its attachments. On October 10, 2018, plaintiff was directed to file his opposition within 21 days. Plaintiff has not opposed the motion.

Local Rule 230(l) provides in part: “Failure of the responding party to file written opposition or to file a statement of no opposition may be deemed a waiver of any opposition to the granting of the motion” Id. On March 13, 2018, 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.

Local Rule 110 provides that failure to comply with the Local Rules “may be grounds for imposition of any and all sanctions authorized by statute or Rule or within the inherent power of

1 the Court.” Id. In the order filed March 13, 2018, plaintiff was also advised that failure to
2 comply with the Local Rules may result in a recommendation that the action be dismissed.


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

4 **Involuntary Dismissal; Effect.** If the plaintiff fails to prosecute or
5 to comply with these rules or a court order, a defendant may move to
6 dismiss the action or any claim against it. Unless the dismissal order
7 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.

8 Id.

9 Good cause appearing, IT IS HEREBY ORDERED that, within twenty-one days from the
10 date of this order, plaintiff shall file an opposition, if any, to the motion for judgment on the
11 pleadings. Failure to file an opposition will be deemed as consent to have the: (a) action
12 dismissed for lack of prosecution; and (b) action dismissed based on plaintiff’s failure to comply
13 with these rules and a court order. Such failure shall result in a recommendation that this action
14 be dismissed pursuant to Federal Rule of Civil Procedure 41(b).

15 Dated: November 6, 2018

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KENDALL J. NEWMAN
18 UNITED STATES MAGISTRATE JUDGE

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