(HC) Avila v. Borders Doc. 20 1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF CALIFORNIA 10 11 ALEXANDER AVILA, No. 2:16-cv-2903 KJN P 12 Petitioner. 13 v. **ORDER** 14 D. BORDERS, 15 16 Respondent. 17 18 Petitioner is a former state prisoner, proceeding without counsel. Both parties consented 19 to proceed before the undersigned for all purposes. See 28 U.S.C. § 636(c). On June 5, 2017, 20 petitioner, filed a motion for permission to use the court's electronic filing system. (ECF No. 19.) 21 Local Rule 133 provides that 22 [a]ny person appearing pro se may not utilize electronic filing except with the permission of the assigned Judge or Magistrate 23 Judge . . . All pro se parties shall file and serve paper documents as required by applicable Federal Rules of Civil or Criminal Procedure 24 or by these Rules. 25 E.D. Cal. L.R. 133(b)(2). Here, petitioner's stipulated request does not set forth a compelling 26 reason why the court should deviate from the Local Rules and its standard practice of disallowing 27 the use of electronic filing by pro se litigants. Thus, the motion is denied without prejudice. 28 //// 1

By order filed May 3, 2017, petitioner was granted one final extension of time, to June 12, 2017, in which to file his opposition to defendants' motion to dismiss. During the pendency of his motion for permission, the deadline to file an opposition expired. In an abundance of caution, petitioner is granted until July 7, 2017, in which to file his opposition. Petitioner is cautioned that failure to file an opposition on or before July 7, 2017, will result in the court finding that such failure is deemed a waiver of his opposition to the motion, and the court will grant the motion, dismissing the unexhausted claims, and requiring petitioner to file an amended petition raising only the one subclaim that is exhausted.

Accordingly, IT IS HEREBY ORDERED that:

- 1. Petitioner's motion for permission (ECF No. 19) is denied; and
- 2. Petitioner shall file an opposition to the motion to dismiss on or before July 7, 2017.

Dated: June 21, 2017

/cw/avil2903.ecf

KENDALL J. NEWMAN

UNITED STATES MAGISTRATE JUDGE