

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

DAMION M. BANKS,  
Plaintiff,  
v.  
KIMBERLY MOULE, et al.,  
Defendants.

No. 2:17-cv-0381 DB P

ORDER

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with a civil rights action under 42 U.S.C. § 1983. Plaintiff, who is confined to a wheelchair, contends that while he was incarcerated at the San Joaquin County Jail, defendants discriminated against him based on his disability in violation of the Americans with Disabilities Act. On October 18, 2017, defendants filed a motion to dismiss this case based on plaintiff’s failure to exhaust his administrative remedies. (ECF No. 14.)

In an order filed August 17, 2017, plaintiff was advised that motions to dismiss shall be briefed pursuant to Local Rule 230(1). (ECF No. 12 at 2-3.) Local Rule 230(1) requires that oppositions to motions be filed “not more than twenty-one (21) days after the date of service of the motion.” More than twenty-one days have passed and plaintiff has not filed an opposition to the motion to dismiss. The August 17 order also warned plaintiff that the failure to timely oppose a motion to dismiss may be deemed a waiver of opposition to the motion. (Id. at 3.)

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

Accordingly, IT IS HEREBY ORDERED as follows:

1. Within thirty days of the date of this order, plaintiff shall file any opposition to the motion to dismiss.
2. If plaintiff fails to file a timely opposition to the motion to dismiss, this court may recommend this action be dismissed for failure to prosecute. See E.D. Cal. R. 110; Fed. R. Civ. P. 41.

Dated: November 28, 2017



---

DEBORAH BARNES  
UNITED STATES MAGISTRATE JUDGE

DLB:9  
DLB1/prisoner-civil rights/bank0381.mtd oppo