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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL TENORE,
Plaintiff,
v.
E. HOROWITZ, ET AL.,
Defendants.

No. 2:17-cv-1802 KJN P

ORDER

On November 7, 2018, defendants filed a motion for summary judgment pursuant to Federal Rule of Civil Procedure 56. Defendants contend that prior to filing the instant action, plaintiff failed to exhaust his available administrative remedies for his delayed cancer diagnosis claim or for his syringe injection feeding claim.¹ Plaintiff has not opposed the motion or filed a statement of non-opposition.

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 November 7, 2018, plaintiff was advised of the requirements for filing an opposition to a motion and that failure to oppose such a motion may be

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¹ Defendants do not dispute that plaintiff exhausted his administrative remedies as to his claims about requests for in-cell feeding and a wedge pillow. (ECF No. 38-1 at 2.)

1 deemed a waiver of opposition to the motion. See Rand v. Rowland, 154 F.3d 952, 957 (9th Cir.
2 1998) (*en banc*), and Klinge v. Eikenberry, 849 F.2d 409, 411-12 (9th Cir. 1988).

3 Local Rule 110 provides that failure to comply with the Local Rules “may be grounds for
4 imposition of any and all sanctions authorized by statute or Rule or within the inherent power of
5 the Court.” Id. In the order filed November 20, 2017, plaintiff was also advised that failure to
6 comply with the Local Rules may result in a recommendation that the action be dismissed.


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

8 **Involuntary Dismissal; Effect.** If the plaintiff fails to prosecute or
9 to comply with these rules or a court order, a defendant may move to
10 dismiss the action or any claim against it. Unless the dismissal order
11 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.

12 Id.

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

19 Dated: December 19, 2018

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KENDALL J. NEWMAN
22 UNITED STATES MAGISTRATE JUDGE

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