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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KENNETH GERMAIN,
Plaintiff,
v.
J. JANAM, et al.,
Defendants.

No. 2:18-cv-3041 JAM DB P

FINDINGS AND 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 April 30, 2020 defendant filed a motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. (ECF No. 40.) 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(1) 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 February 28, 2019, 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. 45.) Plaintiff did not file an opposition, request
9 additional time to file an opposition, or otherwise respond to the order to show cause.
10 Accordingly, plaintiff’s failure to oppose should be deemed a waiver of opposition to the granting
11 of the motion.

12 In accordance with the above, IT IS HEREBY RECOMMENDED that defendants’
13 motion for summary judgment (ECF No. 40) be granted.

14 These findings and recommendations are submitted to the United States District Judge
15 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
16 after being served with these findings and recommendations, any party may file written
17 objections with the court and serve a copy on all parties. Such a document should be captioned
18 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the
19 objections shall be filed and served within fourteen days after service of the objections. The
20 parties are advised that failure to file objections within the specified time may waive the right to
21 appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

22 Dated: April 5, 2021

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26 DEBORAH BARNES
27 UNITED STATES MAGISTRATE JUDGE

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