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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

RICHARD GAYTAN,
Plaintiff,

vs.

HILDA L. SOLIS, SECRETARY OF
LABOR,
Defendant.

Case No: C 07-6367 SBA

ORDER

Docket 89.

On March 23, 2012, Defendant Hilda L. Solis, Secretary of Labor ("Defendant"), filed a motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, which was noticed for hearing on May 1, 2012. Dkt. 89. Under Civil Local Rule 7-3(a), Plaintiff Richard Gaytan's ("Plaintiff") opposition was due on April 10, 2012. To date, Plaintiff has not filed an opposition or statement of non-opposition as required by Civil Local Rule 7-3(b). Nor has Plaintiff sought an extension of time to file an opposition. As such, the Court orders Plaintiff to file an opposition or statement of non-opposition to Defendant's motion for summary judgment by no later than fourteen (14) days from the date this Order is filed.

"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). 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." Id. This Court's Standing Orders provides: "The failure of

1 the opposing party to file a memorandum of points and authorities in opposition to any
2 motion shall constitute a consent to the granting of the motion." Civil Standing Order at 5.

3 Accordingly, Plaintiff is warned that the failure to timely file a written opposition to
4 Defendant's motion for summary judgment will be construed by the Court as a consent to
5 the granting of the motion. See Brydges, 18 F.3d at 653 ("because Brydges was warned of
6 the consequence of his failure to respond to the appellees' summary judgment motion, the
7 district court did not err by deeming his failure to respond a consent to the motion for
8 summary judgment"). Plaintiff is further warned that the failure to comply with this Order
9 will result in dismissal of this action under Rule 41(b) of the Federal Rules of Civil
10 Procedure for failure to prosecute and failure to comply with a Court Order.

11 For the reasons stated above, IT IS HEREBY ORDERED THAT:

12 1. Plaintiff shall file an opposition to Defendant's motion for summary judgment
13 by no later than fourteen (14) days from the date this Order is filed.

14 2. Plaintiff's opposition shall comply in all respects with the Federal Rules of
15 Civil Procedure and the Court's Civil Local Rules.

16 3. In the event that Plaintiff files a timely response to the motion for summary
17 judgment, Defendant may file a reply by no later than seven (7) days after the deadline for
18 Plaintiff's response.

19 4. The motion hearing scheduled for May 1, 2012 is VACATED. Upon the
20 completion of the briefing schedule or the deadline for Plaintiff to file an opposition, the
21 Court will take the matter under submission. Defendant shall notify the Court if Plaintiff
22 fails to file a timely response to the motion for summary judgment.

23 IT IS SO ORDERED.

24 Dated: 4/27/12

25 
26 SAUNDRA BROWN ARMSTRONG
27 United States District Judge
28

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 GAYTAN et al,

5 Plaintiff,

6 v.

7 SOLIS et al,

8 Defendant.

9 _____/

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Case Number: CV07-06367 SBA

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CERTIFICATE OF SERVICE

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14 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
15 Court, Northern District of California.

16

17 That on April 27, 2012, I SERVED a true and correct copy(ies) of the attached, by placing said
18 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing
19 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
20 located in the Clerk's office.

18

19

20

21 Richard Gaytan
22 433 Red Lion Way
23 Newman, CA 95360

24 Dated: April 27, 2012

25

Richard W. Wieking, Clerk

26

By: Lisa Clark, Deputy Clerk

27

28

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