

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

3  
4 Nathaniel Johnson,  
5 Plaintiff  
6 v.  
7 Doe Kelly, et al.,  
8 Defendants

2:11-cv-01858-JAD-VCF

Order Denying Motion to Enter Summary  
Judgment By Default Based on L.R. 7-2

[ECF No. 93]

9  
10 Defendants moved for summary judgment on December 20, 2016.<sup>1</sup> When the plaintiff  
11 failed to oppose the motion by the response deadline, defendants filed a separate motion asking  
12 the court to grant the motion under Local Rule 7-2, which allows the court to grant a motion  
13 when it is unopposed—**except when that motion is one for attorneys fees or summary**  
14 **judgment.**

15 In urging the court to enter summary judgment by default, defendants rely on an outdated  
16 and superseded version of Local Rule 7-2. Although Local Rule 7-2(d) previously suggested that  
17 the court could grant any unopposed motion, the local rules were amended nine months ago. The  
18 new version of the rule now clearly says: “The failure of an opposing party to file points and  
19 authorities in response to any motion, **except a motion under Fed. R. Civ. P. 56 . . .**, constitutes  
20 a consent to the granting of the motion.”<sup>2</sup> The local rule was amended to reflect the Ninth  
21 Circuit’s ruling in *Heinemann v. Satterberg*<sup>3</sup> that the failure to oppose a motion for summary  
22 judgment does not permit the court to enter summary judgment by default by applying local rules

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25 <sup>1</sup> ECF No. 91.

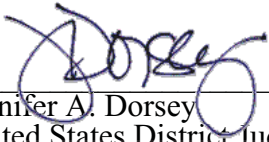
26 <sup>2</sup> L.R. 7-2(d) (emphasis added), available on the court’s website at: <http://www.nvd.uscourts.gov/>

27 <sup>3</sup> *Heinemann v. Satterberg*, 731 F.3d 914, 917 (9th Cir. 2013) (“Because this local rule conflicts  
28 with the Federal Rule, it cannot provide a valid basis for granting a motion for summary  
judgment.”).

1 like 7-2(d).<sup>4</sup>

2 Accordingly, IT IS HEREBY ORDERED that Defendants' Motion Pursuant to Local  
3 Rule 7-2 in Support of Motion for Summary Judgment [ECF No. 93] is **DENIED**. The court  
4 will address the motion for summary judgment [ECF No. 91] on its merits in due course.

5 DATED: February 2, 2017

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8 Jennifer A. Dorsey  
9 United States District Judge  
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25 <sup>4</sup> See Summary of Amendments to Local Civil Rules, available at [http://www.nvd.uscourts.gov/](http://www.nvd.uscourts.gov/Files/Summary%20of%20Amendments%20to%20Local%20Civil%20Rules.pdf)  
26 Files/Summary%20of%20Amendments%20to%20Local%20Civil%20Rules.pdf (explaining,  
27 “Subsection (d) is amended to exclude motions for summary judgment and motions for  
28 attorney’s fees from those that automatically may be granted if unopposed.”).