

1 on grounds of qualified immunity. F&R 11–14, ECF No. 52. On March 11, Mr. Gibbs filed
2 objections to the magistrate judge’s findings and recommendations. Objections, ECF No. 55.

3 As explained below, the court adopts the magistrate judge’s findings and
4 recommendations that summary judgment be granted for both defendants. The court, however,
5 writes separately in response to Mr. Gibb’s objections, as well as to supplement and correct the
6 magistrate court’s findings with respect to whether Deputy Edwards is entitled to qualified
7 immunity.

8 I. BACKGROUND

9 Mr. Gibbs filed a complaint in this court on December 18, 2013. Compl., ECF
10 No. 1. Because the complaint did not specify any particular basis of liability, the magistrate judge
11 construed the complaint to assert the following: (1) Deputy Edwards violated Mr. Gibbs’ Fourth
12 Amendment rights by seizing his shotgun,² and (2) Sergeant Jackson is liable under a theory of
13 supervisory liability. F&R at 10. In defendants’ motion for summary judgment, they argue
14 Deputy Edwards did not violate Mr. Gibbs’ Fourth Amendment rights because he seized Mr.
15 Gibbs’ gun under the community caretaking exception. Mot. at 13. They further argue Sergeant
16 Jackson cannot be liable under 42 U.S.C. § 1983 for supervisory liability. *Id.* at 17.

17 The magistrate judge noted defendants’ motion was unopposed. F&R at 1.
18 Specifically, the magistrate judge found Sergeant Jackson did not implement a constitutionally
19 deficient policy and he could not be liable under §1983 for the actions of his supervisees. *Id.* at
20 11. As to Deputy Edwards, the magistrate judge rejected the argument that seizing Mr. Gibbs’
21 gun was justified under the community caretaking exception to the Fourth Amendment warrant

22 ² The magistrate judge also construed Mr. Gibbs’ complaint to make a claim against
23 Deputy Edwards for making a false report. F&R at 10. However, the court does not agree with
24 this reading; Mr. Gibbs’ complaint alleges Deputy Edwards’s decision to charge Mr. Gibbs’ with
25 felony possession of a firearm was based not on any report Deputy Edwards made, but on an
26 official police record indicating Mr. Gibbs was a convicted felon. *Id.* The police record was
27 ultimately found to be erroneous because the felony charge had been reduced. *See id.* Mr. Gibbs
28 does not allege, however, that Deputy Edwards knew the report was erroneous when he decided
to charge Mr. Gibbs, or that he otherwise made a false report. *See generally* Compl. Further, the
record shows, and Mr. Gibbs does not dispute, that aside from seizing the shotgun, Deputy
Edwards had no other role in subsequent proceedings against Mr. Gibbs. F&R at 6.

1 requirement. *Id.* at 12. After reviewing *Shields v. Tracy*, 2005 WL 1490300 *5 (E.D. Cal. 2009),
2 the only in-circuit case defendants cited in support of their community caretaking defense, the
3 magistrate judge concluded,

4 *Shields* is unpersuasive. In that case, the community caretaker
5 exception was discussed in the context of the plaintiff's claim that
6 she had been improperly stopped and detained by the police, not
7 that her property had been improperly seized as is plaintiff's claim
8 in this case. Additionally, unlike the plaintiff in *Shields*, plaintiff in
9 this case was not being detained, held in custody, or placed under
10 arrest at the time defendant Edwards seized the shotgun.
11 Defendants have not cited any Ninth Circuit authority supporting
12 the proposition that a community caretaker exception applies to
13 seizures of property occurring under the circumstances presented in
14 this case.

15 *Id.* The magistrate judge also noted searches under the community caretaking exception are
16 generally limited to vehicles, and that no Ninth Circuit case has held the community caretaking
17 exception applies to facts analogous to those of Mr. Gibbs' case, which included a search of Mr.
18 Gibbs' person and not his vehicle. *Id.* at 13. In the absence of Ninth Circuit case law, the
19 magistrate judge held Deputy Edwards was entitled to qualified immunity because it was not
20 "clearly established" the community caretaking exception did not apply to the facts of this case.

21 *Id.* The magistrate judge granted summary judgment as to Deputy Edwards. *Id.*

22 Mr. Gibbs makes three objections to the magistrate judge's conclusions: (1) the
23 magistrate judge should not have concluded defendants' motion was unopposed, and in any event,
24 Mr. Gibbs requests a continuance because he was incarcerated on September 11, 2015; (2) the
25 magistrate judge's conclusion as to Sergeant Jackson is erroneous; and (3) the conclusion as to
26 Deputy Edwards is erroneous. *See generally* Objections. Additionally, Mr. Gibbs requests leave
27 to join the County of Shasta and the District Attorney of Shasta as defendants to this action.

28 *Id.* at 1.

In response, defendants contend: (1) the magistrate judge rightly concluded the
motion was unopposed, for Mr. Gibbs' September 11, 2015 incarceration had no bearing on
Mr. Gibbs' ability to oppose defendants' motion filed on August 5, 2015, and Mr. Gibbs' request
for continuance is untimely; (2) Mr. Gibbs has not adequately shown how the magistrate judge's
findings are erroneous as to Sergeant Jackson; and (3) Mr. Gibbs has not adequately shown how

1 the magistrate judge's findings are erroneous as to Deputy Edwards. *See generally* Response,
2 ECF No. 56. As to Mr. Gibbs' requested leave to amend, defendants contend the request should
3 be rejected as untimely. *Id.* at 2.

4 II. STANDARD OF REVIEW

5 On a review of a magistrate judge's findings and recommendations, this court
6 undertakes a "de novo determination of those portions of the report or specified proposed findings
7 or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). As this language
8 makes clear, the court need not "review, de novo, findings and recommendations that the parties
9 themselves accept as correct." *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003)
10 (en banc). When reviewing the findings and recommendations, the court presumes any findings
11 of fact not objected to are correct. *See Orand v. United States*, 602 F.2d 207, 208 (9th Cir. 1979).
12 The court "may accept, reject, or modify, in whole or in part, the findings and recommendations
13 made by the magistrate judge." 28 U.S.C. § 636(b)(1).

14 III. DISCUSSION

15 As a preliminary matter, the court notes neither party has alerted the court to errors
16 in the magistrate judge's factual findings. The court therefore adopts the findings in full. *Orand*,
17 602 F.2d at 208.

18 A. Objection to Magistrate Judge's Finding of Non-Opposition

19 Mr. Gibbs objects to the magistrate judge's finding that defendants' motion for
20 summary judgment was unopposed, and requests a continuance of the hearing date on this
21 motion. *See* Objections at 1. Mr. Gibbs contends his objection and request is justified because of
22 his incarceration in the Shasta County jail since September 11, 2015. *Id.* Defendants argue
23 Mr. Gibbs' incarceration is irrelevant, because his opposition was due before his arrest. Response
24 to Objections, ECF No. 56 at 2. While defendants do not specify which date Mr. Gibbs'
25 opposition was due, the court notes Mr. Gibbs' opposition was due by August 26 for the hearing
26 on defendants' motion for summary judgment, which was set for September 9. *See* E.D. Cal.
27 L.R. 230 (opposition to motion due fourteen days before hearing); *see also* ECF No. 30 (setting
28 law and motion hearing date for September 9, 2015).

1 The court agrees with defendants in concluding Mr. Gibbs' incarceration is not
2 relevant to determining whether the magistrate judge rightly concluded the motion was
3 unopposed. First, defendants' motion for summary judgment was filed on August 5, 2016, over
4 one month before Mr. Gibbs was incarcerated. Additionally, Mr. Gibbs was served at the address
5 on file on August 5, the same day defendants' motion was filed with this court. ECF No. 35. To
6 the extent Mr. Gibbs changed his address or place of residency, he was under a continuing duty to
7 notify the Clerk and all other parties of this change. E.D. Cal. L.R. 182(f). Because Mr. Gibbs
8 did not formally file his change of address until February 29, 2016, ECF No. 50, service of
9 documents at the prior address was deemed effective. E.D. Cal. L.R. 128(f). Moreover, as noted
10 above, Mr. Gibbs' opposition to defendants' motion was due by August 26, 2015, allowing him
11 to respond to defendants' motion for summary judgment over two weeks before he was
12 incarcerated.

13 Requests for continuances of hearing dates must be made at least seven days
14 before the scheduled hearing date. E.D. Cal. L.R. 230(f). As noted above, the hearing date for
15 defendants' motion for summary judgment was set before the magistrate judge for September 9,
16 2015, two days before Mr. Gibbs' custodial arrest. *See* ECF No. 30. Mr. Gibbs did not request a
17 continuance of the hearing date until February 29, 2016, long after the date had passed. *See* ECF
18 No. 50. Mr. Gibbs' request for continuance is untimely and the motion is deemed unopposed.
19 Nonetheless, out of an abundance of caution, the court considers the merits to Mr. Gibbs'
20 remaining objections, as discussed below.

21 B. Objection to Recommendation Regarding Sergeant Jackson

22 The magistrate judge determined Sergeant Jackson could not be held liable under
23 § 1983 for the actions of his supervisees, and because there was no showing that he implemented
24 a constitutionally deficient policy. F&R at 12. Mr. Gibbs objects to these findings, contending
25 the claim against Sergeant Jackson is based on "his own conduct" and not simply as Deputy
26 Edwards' supervisor. Objections at 3.

27 In support of his argument, Mr. Gibbs reiterates the allegations made in his
28 complaint, asserting Sergeant Jackson was very rude to him and refused to investigate Deputy

1 Edwards' actions. Mr. Gibbs has not presented any additional allegations, facts, or evidence
2 supporting a colorable claim based on supervisory liability against Sergeant Jackson. After an
3 independent review, the court further concludes nothing shows Sergeant Jackson individually
4 engaged in any constitutional violation. The magistrate judge's recommendations as to Sergeant
5 Jackson are adopted in full.

6 C. Objection to Recommendations Regarding Deputy Edwards

7 The magistrate judge determined Deputy Edwards did not adequately contend the
8 community caretaker exception to the Fourth Amendment warrant requirement excused seizing
9 Mr. Gibbs' gun without a warrant because all cases cited to discussed searches under the
10 community caretaker exception to vehicles, and the facts in Mr. Gibbs' case involved a search of
11 his person. F&R at 13. Nonetheless, the magistrate judge determined Deputy Edwards was
12 entitled to qualified immunity because the application of the community caretaking exception to
13 the facts of this case was not "clearly established" at the time of Deputy Edwards' seizure. *Id.*
14 Mr. Gibbs objects, contending Deputy Edwards' seizure violated clearly established law of which
15 a reasonable person would have been aware. Objections at 2.

16 A government official such as Deputy Edwards may be entitled to qualified
17 immunity insofar as his conduct does not violate "clearly established statutory or constitutional
18 rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800,
19 818 (1982). The qualified immunity test is two-fold. Under the first prong, the court considers
20 whether the facts, taken in the light most favorable to plaintiff, show defendant's conduct violated
21 a constitutional right. *Saucier v. Katz*, 533 U.S. 194, 201 (2001). Under the second prong, the
22 court determines whether the constitutional right was "clearly established." *Pearson v. Callahan*,
23 555 U.S. 223, 232 (2009). In determining whether a constitutional or statutory right was "clearly
24 established," the touchstone question is whether it would be clear to a reasonable officer that his
25 conduct was unlawful in the situation he confronted. *Mueller v. Auker*, 576 F.3d 979, 993 (9th
26 Cir. 2009) ("[T]he . . . question in this case is, was the law such that it should have been clear to
27 [the officer] that he was required in the situation he confronted to give pre-deprivation and post-
28 deprivation notice to an absent father."). Courts in their sound discretion can address the two

1 prongs in any order. *Pearson*, 555 U.S. at 236. If the court concludes defendants are entitled to
2 qualified immunity, it need not consider whether defendants violated the right in the first
3 instance. *See id.* at 244 (holding defendant officers are entitled to qualified immunity without
4 revolving constitutional issue).

5 In their motion for summary judgment, defendants sought to establish the
6 community caretaking exception justified seizing Mr. Gibbs' shotgun. Mot. at 18. The
7 magistrate judge concluded this novel defense was meritless, for it had no support in case law.
8 F&R at 12. Nonetheless, the magistrate judge stated the absence of any authority supporting the
9 application of the community caretaker exception to the facts meant Deputy Edwards did not
10 violate "clearly established . . . constitutional rights of which a reasonable person would have
11 known." F&R at 13 (citing *Pearson*, 555 U.S. at 231). This statement does not accurately reflect
12 the required qualified immunity analysis; the invention of a meritless exception does not entitle a
13 defendant to qualified immunity. Officer Edwards is not entitled to qualified immunity based on
14 this reasoning.

15 The qualified immunity question, however, does not ask whether it would be clear
16 to an officer that a specific defense would justify his conduct, but whether "his conduct was
17 unlawful in the situation he confronted." *Brittain v. Hansen*, 451 F.3d 982, 988 (9th Cir. 2006).
18 The answer to this question entitles Deputy Edwards to qualified immunity.

19 Because the court finds no Supreme Court precedent clearly on point, it looks to
20 the Ninth Circuit for application of "clearly established law." *See Pearson*, 555 U.S. at 244–45
21 (looking to circuit court decisions to inform its qualified immunity analysis). In *United States v.*
22 *Orman*, the Court of Appeals for the Ninth Circuit held no Fourth Amendment violation occurred
23 when, following a consensual encounter, an officer seized a person's weapon upon reasonable
24 suspicion that the person was armed and where the seizure was effected for safety purposes. 486
25 F. 3d 1170, 1175–77 (9th Cir. 2007). In *Orman*, the officer asked for and received consent to
26 approach the plaintiff after hearing he had brought a gun into a shopping mall. *Id.* at 1176. The
27 officer's reasonable suspicion rose to certainty after the plaintiff confirmed he was carrying a gun.
28 *Id.* Because the officer's eventual retrieval of the gun was designed to protect the officer's safety

1 and the safety of shoppers, the Ninth Circuit held the officer’s “seizure . . . was not contrary to the
2 Fourth Amendment.” *Id.* at 1177.

3 Here, the undisputed material facts show Deputy Edwards’ encounter with Mr.
4 Gibbs was consensual. Deputy Edwards encountered Mr. Gibbs in response to a request to
5 transport Mr. Gibbs to Motel 6. F&R at 2. The undisputed facts show at the time of the
6 encounter, upon seeing Mr. Gibbs with a shotgun and three dogs, Deputy Edwards had safety
7 concerns about Mr. Gibbs, who appeared unstable. *Id.* at 6. These facts taken together, when
8 considered in light of *Orman*, convince the court Deputy Edwards’ seizure was reasonable.
9 Deputy Edwards is entitled to qualified immunity.

10 D. Requested Leave for Joinder

11 Mr. Gibbs requests leave to join Shasta County and the District Attorney of Shasta
12 County, contending when he first filed the action on December 18, 2013, the County civil clerk
13 erroneously informed him that “entities” could not be sued. Objections at 1. Notwithstanding
14 whether Mr. Gibbs properly characterizes the District Attorney of Shasta County as an entity, this
15 argument is not properly before this court, and is hereby disregarded. *See* E.D. Cal. L.R. 302
16 (c)(21) (Magistrate judges shall perform all actions in which all the plaintiffs or all the defendants
17 are proceeding in *in propria persona*, including dispositive and non-dispositive motions and
18 matters).

19 IV. CONCLUSION

20 The findings and recommendations are ADOPTED as clarified here and to the
21 extent consistent with this order. Sergeant Jackson’s and Deputy Edward’s motion for summary
22 judgment is GRANTED.

23 This order resolves ECF No. 30.

24 IT IS SO ORDERED.

25 DATED: September 30, 2016.

26
27 
28 UNITED STATES DISTRICT JUDGE