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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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Lester A. Johnston, Jr.,

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No. CV-10-2578-PHX-FJM

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Plaintiff,

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ORDER

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vs.

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United States of America, et al.,

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Defendants.

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We have before us defendants United States of America, Office of Veterans Affairs, General Counsel Department of Veterans Affairs, Carl T. Hayden VA Medical Center, Dr. Kreul, Dr. Aiello, Dr. Delan, and Dr. Mitchell’s motion to dismiss (doc. 15). Plaintiff did not respond, and the time for doing so has expired. Plaintiff asserts claims against defendant Carl T. Hayden VA Medical Center for “negligence, misdiagnosis and unethical practice,” and against defendants Office of Regional Counsel and Office of General Counsel for failure to comply with the Federal Tort Claims Act (“FTCA”), 28 U.S.C. § 2671, et seq. Complaint at 2 (doc. 1).

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Defendants move to dismiss on the following grounds: (1) plaintiff has not established subject matter jurisdiction because he does not allege that he exhausted administrative remedies, as required by the FTCA; (2) plaintiff does not adequately state a claim for medical malpractice under Arizona law, see A.R.S. § 12-563; (3) plaintiff has not filed the requisite

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1 affidavit regarding expert testimony, pursuant to A.R.S. § 12-2603(A); and (4) plaintiff has
2 not stated a claim against defendant General Counsel's office.

3 Plaintiff's response to defendants' motion to dismiss was due on April 10, 2011, but
4 no response has been filed. If an unrepresented party "does not serve and file the required
5 answering memoranda . . . such non-compliance may be deemed a consent to the denial or
6 granting of the motion and the Court may dispose of the motion summarily." LRCiv 7.2(i).
7 Plaintiff's failure to respond is deemed consent to the granting of the motion.

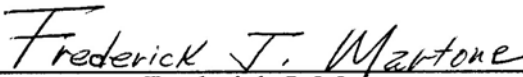
8 Therefore, **IT IS ORDERED GRANTING** defendants' motion to dismiss (doc. 15).

9 Plaintiff shall have to and including May 2, 2011 within which to file an amended
10 complaint that cures the deficiencies noted by the defendants. If no amended complaint is
11 filed by May 2, 2011, the clerk shall dismiss this action with prejudice.

12 We urge plaintiff to seek the advice of a lawyer.

13 DATED this 21st day of April, 2011.

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Frederick J. Martone
United States District Judge