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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARION C. WOLFE, JR.,

Plaintiff,

No. CIV S-03-2574 LKK GGH P

vs.

EDWARD S. ALAMEIDA, et al.,

Defendants.

ORDER and

FINDINGS & RECOMMENDATIONS

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On July 10, 2009, this court granted defendants’ motion to compel plaintiff’s deposition, ordered plaintiff to appear for a newly scheduled deposition, and directed defendants to file a declaration describing their fees and expenses associated with plaintiff’s failure to attend his initially scheduled deposition. Defendants thereafter filed a declaration and supporting documents demonstrating they incurred \$1,246.50 in associated fees and expenses. See Docket 97.

On August 20, 2009, defendants filed a motion to dismiss this action and for further monetary sanctions, due to plaintiff’s failure to appear for his second scheduled deposition. See Fed. R. Civ. P. 37(d) (authorizing sanctions, including dismissal and reasonable fees and expenses for failure of party to attend own deposition). Defendants filed a declaration and supporting documents demonstrating they incurred \$772.50 in fees and expenses associated with plaintiff’s failure to appear at his second scheduled deposition. See Docket 100.

1 Plaintiff has filed no opposition to these matters, despite the court's order filed  
2 October 6, 2009, advising him that failure to file an opposition may result in a recommendation  
3 this action be dismissed.

4 Local Rule 78-230(m) provides in pertinent part: "Failure of the responding party  
5 to file written opposition or to file a statement of no opposition may be deemed a waiver of any  
6 opposition to the granting of the motion . . . ." Plaintiff's failure to respond to the pending  
7 motion should therefore be deemed a waiver of opposition thereto. Additionally, defendants'  
8 motion is meritorious for the reasons set forth above.

9 Accordingly, IT IS HEREBY ORDERED that:

10 1. Defendants' August 20, 2009 motion to dismiss and for monetary sanctions  
11 (Docket 100), is GRANTED IN PART;

12 2. Defendants are awarded monetary sanctions in the total amount of \$2,019.00;  
13 and

14 3. Plaintiff shall, within twenty-eight days of service of this order, pay defendants  
15 \$2,019.00.

16 Further, IT IS HEREBY RECOMMENDED that:

17 1. Defendants' August 20, 2009 motion to dismiss and for monetary sanctions  
18 (Docket 100), be GRANTED IN FULL; and

19 2. This action be DISMISSED.

20 These findings and recommendations are submitted to the United States District  
21 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty  
22 days after being served with these findings and recommendations, any party may file written  
23 objections with the court and serve a copy on all parties. Such a document should be captioned  
24 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections  
25 shall be served and filed within ten days after service of the objections. The parties are advised  
26 that failure to file objections within the specified time may waive the right to appeal the District

1 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

2 DATED: December 15, 2009

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/s/ Gregory G. Hollows

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UNITED STATES MAGISTRATE JUDGE

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