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

MICHAEL AARON JAYNE,

Plaintiff,

No. 2:07-cv- 2522 LKK KJN P

vs.

SPRINT PCS, INC., et. al.,

Defendants.

FINDINGS & RECOMMENDATIONS

_____ /

Plaintiff is a state prisoner proceeding without counsel with an action pursuant to 42 U.S.C. § 1983.

On April 8, 2010, the court ordered plaintiff to file an opposition to defendants' motion for summary judgment that was filed on October 14, 2009, within 14 days, or the undersigned would recommend that this action be dismissed with prejudice. Dkt. No. 119. The court notes that plaintiff has received several extensions to file an opposition. Dkts. No. 109, 112, 119. The 14 days has since passed and plaintiff has not filed an opposition to the motion for summary judgment or otherwise responded to the court's order.

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. Martinez v. Stanford, 323 F.3d 1178, 1182 (9th Cir. 2003); Brydges v. Lewis, 18 F.3d 651,

1 652 (9th Cir. 1994), citing Henry v. Gill Industries, Inc., 983 F.2d 943, 950 (9th Cir. 1993).

2 However, when the local rule does not require, but merely permits the court to grant a motion for
3 summary judgment, the district court has discretion to determine whether noncompliance should
4 be deemed consent to the motion. Id.

5 In the instant case, plaintiff has been granted several extensions and warned that
6 his failure to oppose the motion for summary judgment would result in the case being dismissed
7 with prejudice. Based on plaintiff's failure to file an opposition, the court concludes that plaintiff
8 has consented to defendants' motion for summary judgment. In the alternative, the court finds
9 that defendants' motion has merit.

10 Accordingly, IT IS HEREBY RECOMMENDED, that defendants October 14,
11 2009 motion for summary judgment (Dkt. No. 97) be granted and this action be dismissed with
12 prejudice.

13 These findings and recommendations are submitted to the United States District
14 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-
15 one days after being served with these findings and recommendations, any party may file written
16 objections with the court and serve a copy on all parties. Such a document should be captioned
17 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the
18 objections shall be filed and served within fourteen days after service of the objections. The
19 parties are advised that failure to file objections within the specified time may waive the right to
20 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

21 DATED: May 11, 2010

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24 _____
25 KENDALL J. NEWMAN
26 UNITED STATES MAGISTRATE JUDGE

26 jayn.2522.f&r