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

RICHARD L. PROCTOR, JR.,

Plaintiff,

No. CIV S-08-3158 GGH P

vs.

T. FELKER, et al.,

Defendants.

ORDER AND

FINDINGS & RECOMMENDATIONS

_____ /

On July 15, 2009, defendants filed a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). Plaintiff has not opposed the motion.

Local Rule 78-230(m) provides in part: "Failure of the responding party to file written opposition or to file a statement of no opposition may be deemed a waiver of any opposition to the granting of the motion" On March 26, 2009, plaintiff was advised of the requirements for filing an opposition to a motion to dismiss and that failure to oppose such a motion may be deemed a waiver of opposition to the motion.

Accordingly, plaintiff's failure to oppose should be deemed a waiver of opposition to the granting of the motion.

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1 IT IS HEREBY ORDERED that the Clerk of Court shall assign a district judge to
2 this case.

3 IT IS HEREBY RECOMMENDED that:

- 4 1. Defendants' July 15, 2009, motion to dismiss (no. 21) be granted; and
- 5 2. This action be dismissed.

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

14 DATED: September 15, 2009

15 /s/ Gregory G. Hollows

16 UNITED STATES MAGISTRATE JUDGE

17 GGH:035
18 proc3158.46