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

CHRISTOPHER S. BRAY

Plaintiff,

No. CIV-S-09-0051 GGH (TEMP) P

vs.

MATHIS

Defendant.

FINDINGS AND RECOMMENDATIONS

\_\_\_\_\_ /

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. On April 8, 2010, defendant filed a motion to dismiss based on the lack of exhaustion of administrative remedies. On June 22, 2010, plaintiff was ordered to file an opposition or a statement of non-opposition to the pending motion within thirty days. Plaintiff failed to respond to the order. On January 20, 2011, plaintiff was again ordered to respond to the motion to dismiss, within twenty-one days. Plaintiff has again failed to respond. In both orders, plaintiff was informed that failure to file an opposition would result in a recommendation that this action be dismissed pursuant to Fed. R. Civ. P. 41(b). The court will recommend dismissal for plaintiff's failure to prosecute his case.

In the alternative, the court finds that the lack of response to the motion indicates that plaintiff has conceded its merit. The undersigned has reviewed the motion and find that it

1 has merit. It should therefore be granted.

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

4 IT IS HEREBY RECOMMENDED that this action be dismissed pursuant to  
5 Federal Rule of Civil Procedure 41(b).

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 one 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 response to the  
11 objections shall be filed and served within seven days after service of the objections. The parties  
12 are advised that failure to file objections within the specified time may waive the right to appeal  
13 the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

14 DATED: February 22, 2011

15 /s/ Gregory G. Hollows

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17 GREGORY G. HOLLOWS  
18 UNITED STATES MAGISTRATE JUDGE

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21 GGH:hm  
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