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

JAIMEY L. DUFF,

Plaintiff,

No. CIV S-09-1053 LKK GGH P

vs.

SOLANO COUNTY SHERIFF'S  
DEPARTMENT, et al.,

Defendants.

FINDINGS & RECOMMENDATIONS

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On January 26, 2010, defendant Villasenor filed a motion to dismiss for plaintiff's alleged failure to exhaust administrative remedies as to plaintiff's allegations against this defendant. By Order filed on November 16, 2009, pursuant to Wyatt v. Terhune, 315 F.3d 1108, 1120 n.14 (9th Cir. 2003), plaintiff was advised of the requirements for opposing a motion to dismiss for failure to exhaust administrative remedies made by a defendant pursuant to non-enumerated Rule 12(b) of the Federal Rules of Civil Procedure. By Order filed on March 17, 2010, plaintiff was granted a generous extension of time until April 12, 2010, to file a response to defendant Villasenor's motion to dismiss. Plaintiff was cautioned that failure to oppose the motion would be deemed a waiver of opposition. Plaintiff has filed no opposition, although court records reflect plaintiff was properly served with notice of the motion and the order

1 granting an extension of time to file opposition at plaintiff's address of record.

2 In the instant case, plaintiff has been cautioned that his failure to oppose the  
3 motion to dismiss would be deemed a waiver of opposition to the motion. Based on plaintiff's  
4 failure to file an opposition, the court concludes that plaintiff has consented to defendant  
5 Villasenor's motion to dismiss. In the alternative, the court finds that defendant Villasenor's  
6 motion has merit.

7 Accordingly, IT IS HEREBY RECOMMENDED that defendant Villasenor's  
8 motion to dismiss for failure to exhaust administrative remedies as to plaintiff's allegations  
9 against this defendant be granted and defendant Villasenor be dismissed from this action. See  
10 Local Rule 110.

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

19 DATED: May 19, 2010

20  
21 /s/ Gregory G. Hollows

22 UNITED STATES MAGISTRATE JUDGE

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24 GGH:009  
25 duff1053.fsc