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

CLARENCE SARGENT,

Plaintiff,

No. CIV S-09-1472 MCE GGH P

vs.

P. STATTI, et al.,

Defendants.

FINDINGS & RECOMMENDATIONS

_____/

On May 12, 2010, defendants filed a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) and non-enumerated Fed. R. Civ. P. 12(b). Pursuant to the Order, filed on July 9, 2010, defendants, on July 12, 2010, filed an amended proof of service indicating that plaintiff had been re-served with this motion at his most current address. In the July 9, 2010, Order, plaintiff was granted twenty-eight days from the date of re-service of defendants' motion to file his response. Plaintiff has failed to respond to the court's order and has neither opposed the motion or otherwise responded to it.

Local Rule 230(l) 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 October 30, 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

1 deemed a waiver of opposition to the motion. In addition, Local Rule 110 states that “[f]ailure of
2 ...a party to comply with these Rules or with any order of the Court may be grounds for
3 imposition by the Court of any and all sanctions authorized by statute or Rule or within the
4 inherent power of the Court.” See Fed. R. Civ. P. 41(b).

5 Accordingly, plaintiff’s failure to oppose should be deemed a waiver of
6 opposition to the granting of the motion. Alternatively, the court has reviewed the motion and
7 finds that it has merit. Accordingly, IT IS HEREBY RECOMMENDED that:

- 8 1. Defendants’ May 12, 2010, motion to dismiss be granted; and
- 9 2. This action be dismissed.

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

18 DATED: September 17, 2010

/s/ Gregory G. Hollows

UNITED STATES MAGISTRATE JUDGE

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