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

ROSANNE SHAUGHNESSY,

Plaintiff,

No. CIV 10-1534 FCD KJM PS

vs.

UNITED STATES OF AMERICA,

FINDINGS AND RECOMMENDATIONS

Defendants.

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Defendant’s motion to dismiss was submitted on the papers. Upon review of the documents in support, no opposition having been filed,<sup>1</sup> and good cause appearing, THE COURT FINDS AS FOLLOWS:

In this action, plaintiff alleges tort claims arising out of a citation issued to her by an employee of the United States Forest Service. The United States is the only appropriate defendant and was substituted in on behalf of the named Forest Service employee defendants.

See 28 U.S.C. § 2679(d).

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<sup>1</sup> Plaintiff failed to timely file opposition. By order filed August 25, 2010, plaintiff was afforded additional time to file opposition and cautioned that failure to file opposition would be deemed as a statement of nonopposition. The additional time to file opposition expired on September 22, 2010.

1 Plaintiff's claims lie under the Federal Tort Claims Act ("FTCA"). There is no  
2 evidence that plaintiff has complied with the administrative requirements of presentation and  
3 exhaustion required under the FTCA. See 28 U.S.C. § 2675(a). Plaintiff was granted additional  
4 time to file opposition and has failed to submit any evidence that she has exhausted her  
5 administrative remedies. As such, this court lacks jurisdiction over this action. Vacek v. United  
6 States Postal Serv., 447 F.3d 1248, 1250 (9th Cir. 2006) (exhaustion requirement jurisdictional  
7 and must be interpreted strictly).

8 Accordingly, IT IS HEREBY RECOMMENDED that defendant's motion to  
9 dismiss for lack of jurisdiction be granted.

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

18 DATED: October 1, 2010.

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U.S. MAGISTRATE JUDGE