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28**\*E-FILED 05-18-2011\***

NOT FOR CITATION  
 IN THE UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 SAN JOSE DIVISION

RICARDO VILLANUEVA and ROGELIO  
 TOPETE,

No. C10-02342 HRL

Plaintiffs,

**ORDER GRANTING DEFENDANTS'  
 MOTION FOR SUMMARY JUDGMENT  
 AS TO PLAINTIFF ROGELIO TOPETE**

v.

AKKAYA, INC., dba RISTORANTE DON  
 GIOVANNI, JOHN AKKAYA, DOES 1-10,

[Re: Docket No. 32]

Defendant.

Defendants move for summary judgment as to the sole remaining plaintiff, Rogelio Topete. The basis for the motion is that Topete failed to respond to their requests for admission; and, by operation of Fed. R. Civ. P. 36, certain matters have been deemed admitted and the admissions are fatal to Topete's claims. FED. R. CIV. P. 36(a)(3); Jensen Decl., Ex. A. Plaintiffs' counsel having advised that no opposition will be filed, defendants' motion for summary judgment is granted.<sup>1</sup> There being no viable claims remaining in this case, the clerk shall enter judgment accordingly and close the file.

SO ORDERED.

Dated: May 18, 2011

  
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 HOWARD R. LLOYD  
 UNITED STATES MAGISTRATE JUDGE

<sup>1</sup> At the motion hearing, plaintiffs' counsel agreed that Topete's claims are, in any event, subject to dismissal for failure to prosecute. See FED. R. CIV. P. 41.

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5:10-cv-02342-HRL Notice has been electronically mailed to:  
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Counsel are responsible for distributing copies of this document to co-counsel who have not registered for e-filing under the court's CM/ECF program.