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6 UNITED STATES DISTRICT COURT  
7 EASTERN DISTRICT OF CALIFORNIA  
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9 DWAYNE MAYFIELD,

CASE NO. 1:10-cv-01091-OWW-GBC (PC)

10 Plaintiff,

ORDER VACATING FINDINGS AND  
RECOMMENDATIONS AND ORDERING  
CLERK TO RE-ISSUE SERVICE  
DOCUMENTS

11 v.

12 M. MIX,

(ECF No. 16)

13 Defendant.

CLERK TO VACATE FINDINGS AND  
RECOMMENDATIONS AND FORWARD  
SERVICE DOCUMENTS TO PLAINTIFF  
FOR COMPLETION AND RETURN WITHIN  
/ THIRTY DAYS

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16  
17 **ORDER**

18 Plaintiff Dwayne Mayfield ("Plaintiff") is a state prisoner proceeding pro se and in  
19 forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed this  
20 action on June 16, 2010. (ECF No. 1.) The Court found that Plaintiff had stated a  
21 cognizable claim against Defendant Mix for excessive use of force in violation of the Eighth  
22 Amendment and ordered that Plaintiff either proceed on that claim or file an amended  
23 complaint to attempt to state additional claims. (ECF No. 9.) Plaintiff did not file any  
24 response. On December 14, 2010, the Court issued Findings and Recommendations  
25 recommending dismissal of the action for failure to comply with a court order.<sup>1</sup> (ECF No.  
26 11.) Plaintiff filed a notice that he did not receive the Findings and Recommendations, and  
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28 <sup>1</sup> Findings and Recommendations filed on December 14, 2010 have since been stricken. (ECF  
No. 14.)

1 that he would like to proceed on the excessive force claim. (ECF No. 13.) Thus, on  
2 January 14, 2011, the Court issued an order finding service of the Complaint appropriate  
3 and forwarding the service documents to Plaintiff for completion and return within thirty  
4 days. (ECF No. 15.) Plaintiff again failed to comply. On March 11, 2011, the Court then  
5 issued Findings and Recommendations recommending dismissal of the action for again  
6 failing to obey the Court's Order. (ECF No. 16.) Plaintiff filed his Objections to these  
7 Findings and Recommendations on April 11, 2011. In his Objections, Plaintiff states that  
8 he did not receive a copy of the January 14, 2011 Order. He further states that he has  
9 been rehoused and unable to submit a change of address because of an institutional lock  
10 down. Plaintiff has submitted a Notice of Change of Address with his Objections. (ECF  
11 No. 18.)

12 Having considered Plaintiff's Objections, the Court finds that he should be allowed  
13 an additional opportunity to proceed on his claim against Defendant Mix. Based on the  
14 foregoing, it is HEREBY ORDERED that:

- 15 1. The Court's March 11, 2011 Findings and Recommendations is VACATED;
- 16 2. Service shall be initiated against Defendant M. Mix;
- 17 3. The Clerk of Court shall send Plaintiff one (1) USM-285 form, one (1)  
18 summons, a Notice of Submission of Documents form, an instruction sheet  
19 and a copy of the Complaint filed June 16, 2010;
- 20 4. Within thirty (30) days from the date of this Order, Plaintiff shall complete the  
21 attached Notice of Submission of Documents and submit the completed  
22 Notice to the Court with the following Documents:
  - 23 a. One completed summons for each Defendant listed above;
  - 24 b. One completed USM-285 form for each Defendant listed above; and
  - 25 c. One (1) copy of the endorsed Complaint filed June 16, 2010.
- 26 5. Plaintiff need not attempt service on the defendants and need not request  
27 waiver of service. Upon receipt of the above-described documents, the Court  
28 will direct the United States Marshal to serve the above-named defendants

1                   pursuant to Federal Rule of Civil Procedure 4 without payment of costs.

2           6.     The failure to comply with this order will result in a recommendation that this  
3                 action be dismissed.

4 IT IS SO ORDERED.

5 Dated: April 15, 2011

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UNITED STATES MAGISTRATE JUDGE