

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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

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

M. MIX, (ECF No. 16)

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

ORDER

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

¹ 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
and a copy of the Complaint filed June 16, 2010;
- 19 4. Within thirty (30) days from the date of this Order, Plaintiff shall complete the
20 attached Notice of Submission of Documents and submit the completed
21 Notice to the Court with the following Documents:
 - 22 a. One completed summons for each Defendant listed above;
 - 23 b. One completed USM-285 form for each Defendant listed above; and
 - 24 c. One (1) copy of the endorsed Complaint filed June 16, 2010.
- 25 5. Plaintiff need not attempt service on the defendants and need not request
26 waiver of service. Upon receipt of the above-described documents, the Court
27 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

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

4 IT IS SO ORDERED.

5 Dated: April 15, 2011

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UNITED STATES MAGISTRATE JUDGE