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

WILLIAM MIDDLEBROOK,

Plaintiff,

No. CIV S-07-1663 DAD

v.

MICHAEL J. ASTRUE,  
Commissioner of Social Security,

ORDER

Defendant.

\_\_\_\_\_/

Plaintiff filed this action on August 14, 2007, and the court issued a scheduling order on September 4, 2007. Documents were forwarded to the United States Marshal for service on September 14, 2007, and the United States Marshal executed service on September 17, 2007. More than 90 days have passed, and defendant has not filed an answer or other response to plaintiff's complaint, as required by the scheduling order.

Despite the fact that no answer is on file, defendant has filed a certificate of service showing that a copy of the administrative record was served on plaintiff by mail on January 23, 2008. Such service triggered the 45-day period during which plaintiff must file a motion for summary judgment and/or remand, unless he has submitted new evidence to the Office of General Counsel. Plaintiff should not be required to prepare and file a motion for summary judgment before defendant has responded to plaintiff's complaint.

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IT IS ORDERED that:

1. Defendant's overdue answer or other response to plaintiff's complaint shall be filed and served within fifteen days from the date on which this order is filed and served electronically; and

2. Defendant shall submit a copy of the administrative record to the court within three days after the answer is filed.

DATED: February 4, 2008.

  
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DALE A. DROZD  
UNITED STATES MAGISTRATE JUDGE

DAD:kw  
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