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

HERMAN TIEMENS, JR.,

Plaintiff,

No. CIV S-09-0052 FCD EFB P

vs.

R.L. ANDREASEN, et al.,

Defendants.

ORDER

_____ /

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. On October 18, 2010, the undersigned issued findings and recommendations recommending that this case be dismissed without prejudice due to plaintiff’s failure to file an opposition to defendants’ motion for summary judgment, despite having been provided two extensions of time for doing so. Dckt. No. 35. Plaintiff has submitted objections to the findings and recommendations. Dckt. No. 36.

In his objections, plaintiff declares under penalty of perjury that he did, in fact, submit an opposition to the summary judgment motion on August 27, 2010, “way before the extension of time had elaps[ed].” Dckt. No. 36 at 3-6. According to plaintiff, “the court probably misplaced the entire envelope that contained plaintiff’s opposition.” *Id.* at 5.

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1 The record in this action belies plaintiff's assertion that he submitted an opposition to the
2 summary judgment motion on August 27, 2010. There is no notation on the docket of any
3 opposition filed on that, or any other, date. Instead, the docket reveals that plaintiff sought his
4 second extension of time to file the opposition by motion dated September 5, 2010 and filed
5 September 8, 2010. Dckt. No. 33. Plaintiff also submitted a declaration dated August 30, 2010
6 and filed September 2, 2010, supporting his request for an extension by informing the court that
7 he could not file the opposition yet because he had not had access to a photocopier. Dckt. No.
8 32. Neither of these filings would have been necessary if plaintiff had, in fact, filed his
9 opposition on August 27, 2010.

10 Nevertheless, plaintiff has now submitted an opposition to the summary judgment motion
11 as an attachment to his objections to the October 18, 2010 findings and recommendations. In
12 light of the general policy favoring resolution of cases on the merits, the court will vacate the
13 October 18, 2010 findings and recommendations. If they so desire, defendants may file and
14 serve a reply to plaintiff's opposition to the July 20, 2010 motion for summary judgment within
15 14 days of the date of this order.

16 Accordingly, it is hereby ORDERED that:

- 17 1. The October 18, 2010 findings and recommendations, Dckt. No. 35, are vacated; and
18 2. Defendants shall have 14 days from the date of this order to file and serve a reply to
19 plaintiff's opposition to the July 20, 2010 motion for summary judgment.

20 DATED: November 29, 2010.

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22 EDMUND F. BRENNAN
23 UNITED STATES MAGISTRATE JUDGE
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