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

MICHAEL DEVELDER,

Plaintiff,

No. CIV S-09-1803 EFB P

vs.

J. HIRSHLER, et al.,

Defendants.

ORDER

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Plaintiff is a state prisoner proceeding without counsel and *in forma pauperis* in an action brought under 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1) and is before the undersigned pursuant to plaintiff’s consent. *See* 28 U.S.C. § 636; *see also* E.D. Cal. Local Rules, Appx. A, at (k)(4).

On August 10, 2010, the court screened plaintiff’s April 12, 2010 amended complaint, and found that service was appropriate for defendants Hirshler and Housley (“defendants”). Dckt. Nos. 9, 10. On September 10, 2010, the court ordered service of the amended complaint on the defendants. Dckt. No. 12.

On October 6, 2010, the United States Marshal returned service of process directed to defendant Housley unserved, with a notation that Housley is not employed at Mule Creek State Prison and his name could not be found in the CDC locator database. Dckt. No. 14.

1 Accordingly, on October 18, 2010, the court gave plaintiff sixty days to provide new information  
2 about where defendant Housley could be served and after giving plaintiff an admonition  
3 regarding Rule 4(m), informed plaintiff that failure to provide further information to allow  
4 service on defendant Housley would result in Housley being dismissed. The sixty-day period  
5 expired and plaintiff did not respond to the court's order. Accordingly, the court dismissed  
6 defendant Housley and ordered that this action would proceed only as to plaintiff's claims  
7 against defendant Hirshler. Dckt. No. 16.

8 On April 13, 2011, the United States Marshal returned the form USM-285/Process  
9 Receipt and Return indicating that defendant Hirshler had been served. Dckt. No. 17. Hirshler  
10 has not appeared or otherwise responded to plaintiff's complaint. Failure to answer or otherwise  
11 file a proper response to a complaint within the time required is grounds for the entry of default  
12 under Rule 55(a) of the Federal Rules of Civil Procedure.

13 Plaintiff has not filed anything with the court since he submitted documents for service of  
14 process on August 24, 2010. Dckt. No. 11. If plaintiff no longer wishes to pursue this action, he  
15 may voluntarily dismiss it without prejudice by filing a notice of dismissal in accordance with  
16 Rule 41(a)(1)(A) of the Federal Rules of Civil Procedure.

17 Accordingly, IT IS HEREBY ORDERED that plaintiff shall, within 30 days of the date  
18 of this order, file an appropriate motion based on the Federal Rules of Civil Procedure and  
19 indicate how, or if, he intends to proceed with this lawsuit. Failure to comply with this order  
20 will result in this action being dismissed for failure to prosecute. *See* Fed. R. Civ. P. 41(b).

21 Dated: February 27, 2012.

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24 EDMUND F. BRENNAN  
25 UNITED STATES MAGISTRATE JUDGE  
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