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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL J. DEVELDER,
Plaintiff,
v.
J. HIRSHLER, et al.,
Defendants.

No. 2:09-cv-1803-EFB P

ORDER

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983.¹ He has previously sought default judgment against defendant Hirshler, who failed to plead or otherwise defend. *See* ECF Nos. 19, 20, 21, 22, 24, 27, 30, 31. The court concluded it could not grant default judgment on the complaint as it stood, because it failed to include sufficient allegations that defendant acted with the requisite “deliberately indifferent” mindset. ECF No. 31 at 4-5. The court directed plaintiff to amend the complaint and thereafter seek default judgment, should defendant again fail to respond.

Plaintiff has filed an amended complaint that states sufficient facts that defendant, in transferring plaintiff while he was scheduled for urgently-needed surgery, knew of plaintiff’s need for the surgery and nevertheless approved his transfer in order to save his institution the cost

¹ The case is before the undersigned pursuant to plaintiff’s consent. ECF No. 4.

1 of the surgery. ECF No. 36 at 4-6. Plaintiff has thereby stated a cognizable Eighth Amendment
2 claim against defendant Hirshler.

3 Accordingly, it is hereby ordered that:

- 4 1. Service is appropriate for defendant Hirshler;
- 5 2. The U.S. Marshal shall personally serve a copy of this order and the amended complaint
6 (ECF No. 36) on defendant J. Hirshler at 7340 Woodrow Dr., Oakland, California, 94611;
- 7 3. Defendant Hirshler shall respond to the complaint within 21 days after service, pursuant to
8 Federal Rule of Civil Procedure 12; and
- 9 4. Should defendant fail to answer or otherwise respond to the amended complaint, plaintiff
10 may again seek default judgment against him.

11 Dated: December 18, 2014.

12 
13 EDMUND F. BRENNAN
14 UNITED STATES MAGISTRATE JUDGE