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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

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

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

ORDER

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. On October 21, 2016, defendant Hirshler filed a motion for summary judgment. ECF No. 65. On February 23, 2017, the court recommended that this action be dismissed without prejudice because plaintiff had not filed an opposition or a statement of non-opposition to the motion. ECF No. 76. Plaintiff objects to the findings and representations, stating that he has never received a copy of the motion. ECF No. 77. In response, defendant notes that indeed, there is no entry in plaintiff’s mail log documenting plaintiff’s receipt of the motion. ECF No. 79. Accordingly, defendant re-served the motion on plaintiff on April 5, 2017 and requests that the court vacate the findings and recommendations and issue a new briefing schedule. *Id*

Good cause appearing, IT IS HEREBY ORDERED that:

- 1. The February 23, 2017 findings and recommendations (ECF No. 76) are vacated.

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2. Within 21 days from the date of this order, plaintiff shall file a response to the motion for summary judgment. Failure to comply with this order may result in another recommendation of dismissal.
3. Defendant's reply, if any, is due seven days after plaintiff's response is docketed on CM/ECF.

DATED: April 20, 2017.

  
EDMUND F. BRENNAN  
UNITED STATES MAGISTRATE JUDGE