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

ROBERT CHRISTOPHER JIMENEZ,

Plaintiff,

No. 2:10-cv-2943 KJM KJN P

vs.

J. WHITFIELD,

Defendant.

ORDER

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On September 6, 2012, plaintiff’s September 5, 2012 opposition to the motion for summary judgment was entered on the court’s docket. On the same day, the court recommended that this action be dismissed based in part on plaintiff’s failure to timely oppose the motion, and his failure to prosecute this action. However, review of plaintiff’s opposition reflects that plaintiff presented his filing to prison authorities for mailing on August 2, 2012. (Dkt. No. 73 at 6.) Under the mailbox rule, plaintiff’s opposition is timely, even though it was not received by the court until September 5, 2012. Douglas v. Noelle, 567 F.3d 1103, 1109 (9th Cir. 2009) (holding that “the Houston mailbox rule applies to § 1983 complaints filed by pro se prisoners”), quoting Houston v. Lack, 487 U.S. 266, 275-76 (1988) (pro se prisoner filing is dated from the date prisoner delivers it to prison authorities). Thus, the findings and recommendations are vacated, and defendant may file a reply within seven days from the date of this order.

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Accordingly, IT IS HEREBY ORDERED that:

1. The September 6, 2012 findings and recommendations (dkt. no. 72) are vacated; and
2. Defendant's reply is due seven days from the date of this order.

DATED: September 10, 2012

  
KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

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