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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

TIMOTHY RAY BAKER,  
Plaintiff,  
v.  
J. MACOMBER, et al.,  
Defendants.

No. 2:15-cv-0248 GEB AC P

ORDER

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with this civil rights action filed pursuant to 42 U.S.C. § 1983. Pursuant to motion filed May 11, 2016,<sup>1</sup> plaintiff seeks an order compelling defendants McCowan and Macomber to respond to plaintiff’s discovery requests reportedly served on April 4, 2016. For the reasons that follow, plaintiff’s motion is denied.

The court initially notes that this action proceeds only against sole remaining defendant Correctional Officer J. McCowan; defendant Macomber was dismissed from this action on October 13, 2015. See ECF No. 17.

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<sup>1</sup> Petitioner’s filing date is based on the prison mailbox rule, pursuant to which a document is deemed served or filed on the date a prisoner signs the document (or signs the proof of service, if later) and gives it to prison officials for mailing. See Houston v. Lack, 487 U.S. 266 (1988) (establishing prison mailbox rule); Campbell v. Henry, 614 F.3d 1056, 1059 (9th Cir. 2010) (applying the mailbox rule to both state and federal filings by prisoners).

1 Pursuant to the Discovery and Scheduling Order issued by the court on January 4, 2016,  
2 the period for conducting discovery expired on April 29, 2016, and any motion necessary to  
3 compel discovery needed to be filed by that date. See ECF No. 21 at 5, ¶ 6. The order also  
4 required that all discovery requests be served not later than sixty days prior to the discovery  
5 deadline, or by February 29, 2016. Id.


6 In his pending motion, plaintiff asserts that he served discovery requests on defendants on  
7 April 4, 2016, but never received a response. Counsel for defendant McCowan has filed an  
8 opposition to plaintiff's motion, wherein counsel states that he has no record of receiving the  
9 subject discovery requests. Counsel further notes that the alleged copies of plaintiff's discovery  
10 requests, attached to plaintiff's motion, are themselves dated May 11, 2016, and that plaintiff has  
11 offered no proof that he served the requests on April 4, 2016. Plaintiff has not filed a reply to  
12 defendant's opposition.

13 Plaintiff's motion to compel is untimely filed. Moreover, plaintiff's motion seeks to  
14 compel defendant's responses to discovery requests that appear never to have been served or, at  
15 best, were untimely served but not received by defendant. There are no grounds for granting  
16 plaintiff's motion or seeking additional briefing.

17 The parties are reminded that the dispositive motion deadline in this action remains July  
18 29, 2016, even though the undersigned's findings and recommendations filed May 3, 2016 remain  
19 pending before the district judge.

20 Accordingly, IT IS HEREBY ORDERED that plaintiff's motion to compel discovery,  
21 ECF No. 37, is denied.

22 DATED: June 16, 2016

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24 ALLISON CLAIRE  
25 UNITED STATES MAGISTRATE JUDGE  
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