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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LOUIS RICHARD FRESQUEZ,)
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 Plaintiff,)
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 vs.)
)
 MOEROYK, et al.,)
)
)
 Defendants.)
)
 _____)

1:04-cv-05123-AWI-GSA-PC

FINDINGS AND RECOMMENDATION,
RECOMMENDING THAT PLAINTIFF'S
MOTION FOR DEFAULT JUDGMENT
BE DENIED WITHOUT PREJUDICE
(Doc. 64.)

OBJECTIONS, IF ANY, DUE IN 30 DAYS

I. BACKGROUND AND FINDINGS

Louis Richard Fresquez (“Plaintiff”) is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on March 11, 2003, in the United States District Court for the Northern District of California. This action now proceeds with Plaintiff’s amended complaint filed March 18, 2003, against Correctional Officer J. R. Mata and Lieutenant Pieter L. Moerdyk, on Plaintiff’s ADA and RA claims concerning conditions of confinement.

On October 12, 2010, Plaintiff filed a motion for default judgment against defendant Moerdyk, pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure. (Doc. 64.) On December 1, 2010, the Court issued an order requiring Plaintiff to supply further information in support of the motion for default judgment, within forty-five days. (Doc. 69.) Plaintiff was ordered to provide information

1 regarding the amount of damages requested against defendant Moerdyk, by way of witness declarations,
2 Plaintiff's declaration, and/or documentary evidence. Plaintiff was advised in the Court's order that "[I]f
3 Plaintiff fails to submit evidence in compliance with this order, the Court will recommend that the
4 motion for default judgment be denied without prejudice to renew upon submission of the requested
5 evidence." (Id. at 2:16-18.) The forty-five day time period has passed, and Plaintiff has not complied
6 with or otherwise responded to the Court's order.

7 **II. RECOMMENDATION AND CONCLUSION**

8 Based on the foregoing, IT IS RECOMMENDED that Plaintiff's motion for default judgment
9 against defendant Moerdyk, filed on October 12, 2010, be denied without prejudice to renew the motion
10 upon submission of the evidence requested by the Court in its order of December 1, 2010. These findings
11 and recommendations are submitted to the United States District Judge assigned to the case, pursuant
12 to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty days after being served with these findings
13 and recommendations, Plaintiff may file written objections with the court. Such a document should be
14 captioned "Objections to Magistrate Judge's Findings and Recommendations." Plaintiff is advised that
15 failure to file objections within the specified time may waive the right to appeal the District Court's
16 order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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IT IS SO ORDERED.

Dated: January 27, 2011

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE