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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ANTONIO CORTEZ BUCKLEY,	CASE NO. 1:04-cv-5622-MJS (PC)
Plaintiff,	ORDER DENYING MOTION FOR
	DEFAULT JUDGMENT
v.	(ECF No. 55)
A.K. SCRIBNER, et al.,	
Defendants.	

Plaintiff Antonio Cortez Buckley is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

On August 6, 2010, the Court screened Plaintiff's First Amended Complaint and found that Plaintiff stated a cognizable free exercise claim but did not state any other claims upon which relief could be granted. (ECF No. 29.) The Court gave Plaintiff leave to file a second amended complaint to cure the deficiencies identified by the Court. (Id.)

Plaintiff filed a Second Amended Complaint on February 16, 2011 (ECF No. 40). The Court screened it on February 22, 2011 (ECF No. 41), found it to be duplicative of his First Amended Complaint and struck it. Inasmuch as the Second Amended Complaint simply repeated the cognizable free exercise claim and the other already-rejected claims, the Court determined that Plaintiff would be permitted to proceed on the cognizable claim against Defendants Dotson, Parangan, Jarralimillio, Peck, Lerman, and Ocegura as asserted in his First Amended Complaint. (Id.)

On April 27, 2011, the Court issued an Order for Plaintiff to complete the required

1 service documents (ECF No. 48) and ordered the United States Marshall to initiate service
2 on May 16, 2011 and to complete service by September 16, 2011 (ECF No. 51).
3 Defendants Jarralimillio, Lerman, Parangan, and Peck have been served and have filed
4 an Answer to Plaintiff's Complaint (ECF No. 53.)

5 On August 1, 2011, Plaintiff filed a Motion for Default Judgment against Defendants
6 Dotson and Ocegura. (ECF No. 55.) His Motion is unfounded.

7 A default, followed by a default judgment, cannot be taken unless and until a
8 Defendant has been served and fails to file a responsive pleading within the time allowed.
9 There is no evidence that Defendants Dotson and Ocegura have yet been served, and
10 thus no reason to believe that their time for filing a responsive pleading has expired.

11 Accordingly, Plaintiff having presented no basis upon which a default could be taken
12 against these defendants, his Motion for a Default Judgment is DENIED.

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15 IT IS SO ORDERED.

16 Dated: September 13, 2011

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE