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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ROBERT BENYAMINI,
Plaintiff,

vs.

DEBBIE MANJUANO, et al.,
Defendants.

1:06-cv-01096-AWI-GSA-PC

FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT PLAINTIFF'S
MOTION FOR DEFAULT JUDGMENT
AGAINST DEFENDANT MANDUJANO BE
DENIED
(Doc. 194.)

OBJECTIONS, IF ANY, DUE IN 20 DAYS

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I. BACKGROUND

Robert Benyamini ("Plaintiff") is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. This action now proceeds on the Third Amended Complaint, filed on May 23, 2008, against defendants Mandujano,¹ Wilcox, Wilkerson, and O'Grady ("Defendants"), on Plaintiff's Eighth Amendment claims for adverse conditions of confinement (Docs. 1, 35.) On July 18, 2012, Plaintiff filed a motion for default judgment against defendant Mandujano. (Doc. 194.)

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¹In the Third Amended Complaint, Plaintiff spelled this defendants last name as Manjuano. (Doc. 35.) Defendant spells her last name as Mandujano. (Doc. 79.) The Court uses defendant's spelling. However, the case title assigned at case opening shall not be changed.

1 **II. PLAINTIFF’S MOTION FOR DEFAULT JUDGMENT**

2 Plaintiff requests default judgment in the amount of \$500,000 against defendant Mandujano,
3 asserting that the Court has entered default against defendant Debbie Mandujano, based on
4 Mandujano’s failure to answer or otherwise defend in this action. The controlling federal rule is
5 Rule 55, Federal Rules of Civil Procedure, which provides in pertinent part as follows:

6 (a) **Entering a Default.** When a party against whom a judgment for
7 affirmative relief is sought has failed to plead or otherwise defend, and that failure
8 is shown by affidavit or otherwise, the clerk must enter the party's default.

8 (b) **Entering a Default Judgment.**

9 (1) *By the Clerk.* If the plaintiff's claim is for a sum certain or a sum
10 that can be made certain by computation, the clerk – on the plaintiff’s request, with
11 an affidavit showing the amount due – must enter judgment for that amount and costs
12 against a defendant who has been defaulted for not appearing and who is neither a
13 minor nor an incompetent person.

14 (2) *By the Court.* In all other cases, the party must apply to the court
15 for a default judgment. A default judgment may be entered against a minor or
16 incompetent person only if represented by a general guardian, conservator, or other
17 like fiduciary who has appeared. If the party against whom judgment by default is
18 sought has appeared personally or by representative, that party or its representative
19 must be served with written notice of the application at least 7 days before the
20 hearing. The court may conduct hearings or make referrals – preserving any federal
21 statutory right to a jury trial – when, to enter or effectuate judgment, it needs to:

- 17 (A) conduct an accounting;
- 18 (B) determine the amount of damages;
- 19 (C) establish the truth of any allegation by evidence; or
- 20 (D) investigate any other matter.

21 Fed. R. Civ. P. 55.

22 Plaintiff is mistaken in his assertion that default has been entered against defendant
23 Mandujano. In fact, all of Plaintiff’s prior motions for entry of default and default judgment against
24 defendants in this action have been denied. (Docs. 66, 67, 83, 120, 169, 177.) In the present motion,
25 Plaintiff offers no evidence or meritorious argument that defendant Mandujano failed to answer the
26 complaint in a timely manner or otherwise failed to defend in this action. Therefore, Plaintiff’s
27 motion must be denied.

1 **III. CONCLUSION AND RECOMMENDATION**

2 Based on the foregoing, the Court RECOMMENDS that Plaintiff's motion for default
3 judgment against defendant Mandujano, filed on July 18, 2012, be DENIED.

4 These findings and recommendations are submitted to the United States District Judge
5 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within twenty (20)
6 days after being served with these findings and recommendations, Plaintiff may file written
7 objections with the Court. Such a document should be captioned "Objections to Magistrate Judge's
8 Findings and Recommendations." Plaintiff is advised that failure to file objections within the
9 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d
10 1153 (9th Cir. 1991).

11
12 IT IS SO ORDERED.

13 **Dated: July 19, 2012**

/s/ Gary S. Austin
14 UNITED STATES MAGISTRATE JUDGE