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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

WILLIE LEE CARPENTER,  
Plaintiff,

CASE NO.: 1:07-cv-00114-AWI-GBC (PC)  
ORDER DENYING MOTION ORDERING  
ANSWER AND FOR DEFAULT

v.

W. J. SULLIVAN, et al.,  
Defendants.

(Doc. 97)

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Plaintiff Willie Lee Carpenter, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on January 22, 2007. On January 18, 2011, Plaintiff filed a motion requesting that the Court order Defendant Martinez to reply to Plaintiff’s complaint and for entry of default. (Doc. 97). On January 31, 2011, Defendants filed an opposition. (Doc. 100). On April 14, 2011, summons returned executed, indicating that Defendant Martinez was served on April 11, 2011. (Doc. 116). On April 25, 2011, Defendant Martinez filed an answer. (Doc. 117).

“Without a proper basis for jurisdiction, or in the absence of proper service of process, the district court has no power to render any judgment against the defendant’s person or property unless the defendant has consented to jurisdiction or waived the lack of process.” *S.E.C. v. Ross*, 504 F.3d 1138-39 (9th Cir. 2007); *accord* *Hutchinson v. United States*, 677 F.2d 1322, 1328 (9th Cir. 1982). Since Defendant was not yet served with the complaint at the time of Plaintiff’s motion for answer and default judgment, the Court lacked jurisdiction to grant the relief Plaintiff requested and Plaintiff’s

1 motion was premature. Moreover, once Defendant Martinez was served, Defendant Martinez filed a  
2 timely answer to the complaint on April 25, 2011, so Plaintiff's motion is now moot.

3 Accordingly, it is HEREBY ORDERED that Plaintiff's motion for answer and default judgment  
4 filed on January 18, 2011, is DENIED. (Doc. 97).

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6 IT IS SO ORDERED.

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8 Dated: October 26, 2011

  
UNITED STATES MAGISTRATE JUDGE

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