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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CHRISTOPHER S. RIDER,

CASE NO. 1:07-cv-01401- LJO DLB PC

Plaintiff,

ORDER DENYING MOTION FOR DEFAULT JUDGMENT

v.

(Doc. 31)

GREENE, et al.,

Defendants.

I. Background

On June 6, 2008, the Court screened Plaintiff’s original complaint and issued a Findings and Recommendations recommending that this action proceed only against defendants Scott and Greene, and forwarded to Plaintiff service documents for completion and return (Docs. 18, 19.) On June 27, 2008, Plaintiff submitted the completed service documents and the Court issued an order directing service by the United States Marshal. (Docs. 21, 22.)

However, on June 12, 2008, Plaintiff filed a First Amended Complaint (“FAC”). (Doc. 20.) In light of Plaintiff’s election to amend his complaint, the Court issued an order vacating the June 6, 2008, Findings and Recommendations. The Court concurrently issued a new Findings and Recommendations following the screening of the FAC. (Docs. 25, 24.) Plaintiff then filed an Objection to these Findings and Recommendations on September 5, 2008. (Doc. 27.)¹

¹ Plaintiff also submitted a proposed amended complaint, which was subsequently ordered stricken because Plaintiff had not been granted leave to amend and had already amended once as a matter of course. (Docs. 28, 34.)

1 On February 27, 2009, the District Judge issued an order addressing the Findings and
2 Recommendations. (Doc. 33.) The District Judge dismissed Plaintiff's FAC and granted Plaintiff
3 leave to file a Second Amended Complaint ("SAC") within thirty (30) days. Plaintiff filed a SAC
4 on April 9, 2009. (Doc. 36.)

5 **II. Motion for Default Judgment**

6 Pending before the Court is Plaintiff's motion for default judgment, filed December 22, 2008.
7 (Doc. 31.) Defendants Greene and Scott filed an opposition on January 6, 2009. (Doc. 32.)

8 Default judgment is not proper in this case as the Court issued an order directing service of
9 the original complaint upon defendants Greene and Scott. Plaintiff's FAC superceded his original
10 complaint, and therefore, once Plaintiff filed the FAC, defendants were no longer required to file a
11 responsive pleading to the original complaint. In addition, defendants were not served with the
12 FAC.² Finally, Plaintiff cannot argue that he is entitled to default judgment against defendants for
13 failing to respond to the SAC because the SAC was filed four months after the motion for default
14 judgment and has not yet been screened by the Court.

15 For the foregoing reasons, Plaintiff's motion for default judgment is DENIED.

16 The Court will screen the SAC in due course. By this order, defendants Greene and Scott
17 are relieved of their obligation of filing a responsive pleading to the SAC until the Court issues its
18 screening order and finds that Plaintiff states cognizable claims against them.

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20 IT IS SO ORDERED.

21 **Dated: September 4, 2009**

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE

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² As previously noted, the FAC was dismissed by order issued February 27, 2009, with leave to file a SAC.