

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

LATWAHN MCELROY,

Plaintiff,

v.

DEPARTMENT OF CORRECTIONS, et al.,

Defendants.

CASE NO. 1:07-cv-01677-OWW-YNP PC

FINDINGS AND RECOMMENDATIONS  
RECOMMENDING DENIAL OF MOTION

(Doc. 18)

RESPONSE DUE WITHIN 20 DAYS

Plaintiff Latwahn McElroy (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Before the Court is Plaintiff’s “Motion For Default By Defendants” filed April 9, 2009. Plaintiff requests that the Court enter default judgment against Defendant B. Cope pursuant to Federal Rule of Civil Procedure 55. Federal Rule of Civil Procedure 55(a) provides “[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party’s default.”

Plaintiff has failed to demonstrate that he is entitled to default judgment. Plaintiff claims that “[o]n or about April 7, 2009 this court entered its order ordering defendants to respond to [the] complaint in said order defendants were allotted[sic] twenty (20) calendar days to respond to Plaintiff’s complaint.” (Pl.’s Mot. for Default by Defendants 1.) The Court is unable to discern what order Plaintiff is referring to. On March 17, 2009 the Court ordered the U.S. Marshall to serve Defendant Cope with a copy of Plaintiff’s complaint. (Doc. # 14.) A service deadline was set for

1 July 20, 2009. A waiver of service was returned executed and entered on the Court's docket on June  
2 23, 2009. (Doc. #20.) Defendant Cope filed an answer to Plaintiff's complaint on July 6, 2009.  
3 (Doc. #21.) The Court finds that Defendant Cope thus far has adequately and promptly responded  
4 to Plaintiff's complaint and Plaintiff is not entitled to default judgment.

5 Based on the foregoing, it is HEREBY RECOMMENDED that Plaintiff's motion for default  
6 judgment, filed April 9, 2009, be DENIED.

7 These Findings and Recommendations will be submitted to the United States District Judge  
8 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **twenty (20)**  
9 **days** after being served with these Findings and Recommendations, plaintiff may file written  
10 objections with the court. The document should be captioned "Objections to Magistrate Judge's  
11 Findings and Recommendations." Plaintiff is advised that failure to file objections within the  
12 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d  
13 1153 (9th Cir. 1991).

14 IT IS SO ORDERED.

15 **Dated: September 24, 2009**

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE