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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION**

SERGIO ALEJANDRO GAMEZ,
CDCR #C-47759,

Plaintiff,

vs.

F. GONZALEZ, S. WRIGHT, N.
GRANNIS, K. BERKLER, K.S. ALLEN,
M. CARRASCO, J. GENTRY,
K. SAMPSON,

Defendants.

Civil No. 08-1113 MJL (PCL)

**ORDER DENYING MOTION FOR
DEFAULT JUDGMENT**

I.

PROCEDURAL HISTORY

On August 1, 2008, Plaintiff, an inmate currently incarcerated at the California Correctional Institution located in Tehachapi, California and proceeding pro se, filed a civil rights Complaint pursuant to 42 U.S.C. § 1983. Plaintiff did not prepay the \$350 filing fee mandated by 28 U.S.C. § 1914(a) to commence a civil action; instead, he filed a Motion to

1 Proceed *In Forma Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a) [Doc. No. 2]. The Court
2 granted Plaintiff’s Motion to Proceed *IFP* on August 7, 2008 [Doc. No. 4].

3 On November 25, 2008, this matter was reassigned to District Judge M. James Lorenz
4 for all further proceedings [Doc. No. 10]. This Court conducted the required sua sponte
5 screening and found that Plaintiff had failed to state a claim upon which relief could be granted
6 pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A(b). See Dec. 30, 2008 Order at 5. Plaintiff was
7 permitted leave to file an Amended Complaint in order to correct the deficiencies of pleading
8 identified by the Court. *Id.* On February 19, 2009, Plaintiff filed his First Amended Complaint
9 (“FAC”). The Court, once again, sua sponte dismissed Plaintiff’s First Amended Complaint for
10 failing to state a claim but permitted him one final opportunity to file a Second Amended
11 Complaint. See Feb. 26, 2009 Order at 6. Plaintiff filed his Second Amended Complaint
12 (“SAC”) on April 1, 2009 [Doc. No. 13]. On May 7, 2009, the Court dismissed the claims
13 against Defendants Melinda, Roman and Moreno but directed the U.S. Marshal to effect service
14 of Plaintiff’s Second Amended Complaint on the remaining Defendants. See May 7, 2009 Order
15 at 6-7. On November 13, 2009, Plaintiff filed a “Motion for Default Judgment” [Doc No. 18].

16 **II.**

17 **MOTION FOR DEFAULT JUDGMENT**

18 In his Motion, Plaintiff requests that the Court enter default judgment against all the
19 named Defendants. Pursuant to Federal Rules of Civil Procedure 55(a), [w]hen a party against
20 whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and
21 that failure is shown by affidavit or otherwise, the clerk must enter the party’s default.”
22 FED.R.CIV.P. 55(a).

23 The Court’s docket reflects that the documents necessary to serve Defendants was
24 forwarded to the United States Marshal Service on July 28, 2009. To date, only one summons
25 has been returned unexecuted as to Defendant S. Wright with the notation that there was “no
26 such name” in the records of the California Department of Corrections and Rehabilitation
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1 (“CDCR”) [Doc. No. 16]. There is no record that any of the named Defendants have been
2 properly served. Thus, Plaintiff’s Motion for Entry of Default Judgment is DENIED.


3 **III.**

4 **CONCLUSION AND ORDER**

5 Good cause appearing, **IT IS HEREBY ORDERED** that Plaintiff’s Motion for Default
6 Judgment [Doc. No. 18] is **DENIED**.

7 **IT IS SO ORDERED.**

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9 DATED: November 20, 2009

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11 M. James Lorenz
12 United States District Court Judge
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