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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,	CASE NO. 1:08-cv-01643-LJO-SMS
Plaintiff,	FINDINGS AND RECOMMENDATIONS
v.	RECOMMENDING DENIAL OF
	THE GOVERNMENT’S MOTION FOR
	DEFAULT JUDGMENT
LOWELL D. WELDON, et al.,	
Defendants.	(Doc. 31)

Pending before the court is the United States’ (“government”) Motion for Entry of Default Judgment against defendants Lowell D. Weldon, Bessie L. Weldon and Midland Mortgage Company (“Midland”)(collectively, the “defendants”).¹ This court has reviewed the papers and has determined that this matter is suitable for decision without oral argument pursuant to Local Rule 78-230(h). Having considered all written materials submitted, the undersigned recommends that the government’s motion be denied.

After reviewing plaintiff’s motion, supporting briefs and exhibits, this court finds that plaintiff has not established legally sufficient service on defendants. Summonses were issued against all defendants on October 28, 2008 (doc. 2). Midland was not served (doc. 5). Although both Lowell D. and Bessie L. Weldon were purportedly served on December 11, 2008, and their respective summonses returned executed on January 14, 2009 (docs. 8 and 9), nothing on either

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¹ This motion does not address defendants County of Fresno or State of California Franchise Tax Board.

1 returned summons identifies which of the seven defendants was served. Indeed, the summonses
2 submitted for recording as documents 8 and 9 are completely identical, listing all seven
3 defendants in the portion of the summons intended to set forth the name of the defendant upon
4 whom it is to be served.

5 Accordingly, the undersigned **HEREBY RECOMMENDS** that the government’s motion
6 for the entry of default judgment against defendants Lowell D. Weldon, Bessie L. Weldon and
7 Midland Mortgage Company be denied.

8 These findings and recommendations are submitted to the Honorable Lawrence J.
9 O’Neill, United States District Court Judge, pursuant to the provisions of 28 U.S.C.
10 § 636(b)(1)(B) and Rule 72-304 of the Local Rules of Practice for the United States District
11 Court, Eastern District of California. Within thirty (30) days after being served with a copy, any
12 party may file written objections with the court, serving a copy on all parties. Such a document
13 should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” The
14 Court will then review the Magistrate Judge’s ruling pursuant to 28 U.S.C. § 636(b)(1)(C). The
15 parties are advised that failure to file objections within the specified time may waive the right to
16 appeal the District Court’s order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

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20 IT IS SO ORDERED.

21 **Dated:** December 14, 2009

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE