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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MALCOLM P. COLEMAN,

1:09-cv-00546-AWI-DLB (HC)

Petitioner,

ORDER DENYING PETITIONER’S MOTION
FOR ENTRY OF DEFAULT AND MOTION
FOR SUMMARY JUDGMENT

v.

[Docs. 15, 16]

B. CURRY, Warden

Respondent.

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

Now pending before the Court is Petitioner’s motion for entry of default and motion for summary judgment filed on June 11, 2009. (Court Docs. 15, 16.)

Entry of default is appropriate as to any party against whom a judgment for affirmative relief is sought that has failed to plead or otherwise defend as provided by the Federal Rules of Civil Procedure and where that fact is made to appear by affidavit or otherwise. See Fed. R. Civ. P. 55(a).

On May 8, 2009, the Court directed Respondent to file a response to the petition within sixty (60) days from the date of service, i.e. July 7, 2009.¹ (Court Doc. .) Respondent filed a timely response to the petition on July 7, 2009, which was served by mail on Petitioner at his

¹ Petitioner incorrectly states that the Court ordered Respondent to file a response to the petition within twenty or thirty days plus an additional three days for mailing. (Court Doc. 15, Motion, at 3.)

1 address of record. (Court Doc. 17.) Accordingly, because there is simply no basis upon which to
2 enter default, Petitioner's motion for default judgment and motion for summary judgment are
3 HEREBY DENIED.

4
5 IT IS SO ORDERED.

6 **Dated: July 29, 2009**

/s/ Anthony W. Ishii
CHIEF UNITED STATES DISTRICT JUDGE