

1
2
3
4
5
6
7
8
9
10
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

11 KATHY TRIPP,

CASE NO. 1:09cv1400 SKO

12 Plaintiff pro se,

ORDER DENYING MOTION FOR JUDGMENT

13 (Doc. 33)

14 v.

15 MICHAEL J. ASTRUE,
Commissioner of Social Security,

16 Defendant.
17 _____/

18 On June 9, 2010, Plaintiff filed a motion for judgment, alleging that the Defendant did not
19 file an answer to her complaint. (Doc. 33.) Plaintiff's motion essentially requests a default judgment
20 against the Defendant. In general, a plaintiff is not entitled to default judgment against the
21 Defendant under such circumstances. *See* Fed. R. Civ. P. 55(d) (default judgments against the
22 Federal Government cannot be issued unless "the claimant establishes a claim or right to relief by
23 evidence that satisfies the court"). Specifically, Plaintiff is not entitled to default judgment here
24 because the answer is not yet due.

25 The Court's scheduling order directed: "Within one hundred twenty (120) days after service
26 of the complaint, respondent shall serve a copy of the administrative record on appellant and file it
27 with the court. The filing of the administrative record shall be deemed an answer to the complaint."
28 (Doc. 17 ¶ 2.)

1 Plaintiff did not complete service until March 5, 2010. (Doc. 29.) Therefore, pursuant to the
2 Scheduling Order, the Defendant is not required to answer Plaintiff's complaint until July 6, 2010,
3 which is 120 days following service of the complaint. *See* Fed. R. Civ. P. 6(a)(1)(C). Accordingly,
4 Plaintiff's motion for judgment is DENIED.

5
6 IT IS SO ORDERED.

7 **Dated: June 15, 2010**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE