

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

CHRISTOPHER N. WASHINGTON,

Plaintiff,

v.

DERRAL G. ADAMS,

Defendant.

CASE NO. 1:09-cv-01666-SKO PC

ORDER DENYING PLAINTIFF’S MOTION
FOR ENTRY OF DEFAULT

(Doc. 27)

Plaintiff Christopher N. Washington, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on September 21, 2009. On July 21, 2011, Plaintiff filed a motion seeking the entry of default against Defendant Adams. Fed. R. Civ. P. 55(a).

The United States Marshal was directed to initiate service of process on June 14, 2011. Court Doc. 24, Service Order. There is no evidence in the record that service has been effected, triggering Defendant’s legal obligation to respond to Plaintiff’s amended complaint. Fed. R. Civ. P. 4(d), (e); Fed. R. Civ. P. 55(a). Indeed, the Court notes that Defendant has an opportunity to waive service of the summons and amended complaint, and should he elect to waive service, he has sixty (60) days from the date set forth in the waiver to file that response. Fed. R. Civ. P. 4(d); Service Order. Plaintiff’s motion is clearly premature – the absence of any documentary evidence in support of his motion notwithstanding. Until and unless Plaintiff has evidence that Defendant is in default, he should not seek entry of default.

///

1 Accordingly, Plaintiff's motion for entry of default is HEREBY DENIED. Fed. R. Civ. P.
2 55(a).

3
4 IT IS SO ORDERED.

5 **Dated: July 25, 2011**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE

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