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6 IN THE UNITED STATES DISTRICT COURT FOR THE
7 EASTERN DISTRICT OF CALIFORNIA
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9 RAEKUBIAN A. BARROW,

CASE No. 1:10-cv-00154-LJO-MJS (PC)

10 Plaintiff,

ORDER DENYING PLAINTIFF'S
MOTION FOR DEFAULT JUDGMENT

11 vs.
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(ECF No. 78)

13 WARDEN CALIFORNIA MEDICAL
14 FACILITY, CORCORAN, et al.,

15 Defendants.
16 _____/

17 Plaintiff Raekubian A. Barrow, a state prisoner proceeding pro se and in forma
18 pauperis, filed this civil rights action on February 1, 2010 pursuant to 42 U.S.C. §
19 1983. (ECF No. 1.)

20 This matter proceeds on Plaintiff's Second Amended Complaint which states
21 an Eighth Amendment excessive force claim against Defendant Martinez. (ECF No.
22 32.)

23 Pending before the Court is Plaintiff's Motion for entry of default judgment
24 against non-answering defendant. (ECF No. 78.)

25 Rule 55(a) of the Federal Rules of Civil Procedure requires that the Clerk of the
26 Court enter default "when a party against whom a judgment for affirmative relief is
27 sought has failed to plead or otherwise defend, and that failure is shown by affidavit or
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1 otherwise.” Fed.R.Civ.P. 55(a). Rule 55(b)(2) provides that the Court may grant a
2 default judgment after default has been entered by the Clerk of the Court.

3 Defendant Martinez, who was required to file a responsive pleading by July 16,
4 2012 (ECF NO. 44), answered on July 3, 2012. (ECF No. 48.) Plaintiff is not entitled to
5 entry of default against Defendant Martinez.

6 Accordingly, based on the foregoing, it is HEREBY ORDERED that Plaintiff’s
7 Motion for entry of default judgment (ECF No. 78) is DENIED.

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10 IT IS SO ORDERED.

11 Dated: May 16, 2013

/s/ Michael J. Long
UNITED STATES MAGISTRATE JUDGE