

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA

RAEKUBIAN A. BARROW, CASE No. 1:10-cv-00154-LJO-MJS (PC)

ORDER DENYING PLAINTIFF'S  
MOTION FOR DEFAULT JUDGMENT  
  
(ECF No. 78)

WARDEN CALIFORNIA MEDICAL  
FACILITY, CORCORAN, et al.,

## Defendants.

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

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

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

Rule 55(a) of the Federal Rules of Civil Procedure requires that the Clerk of the Court enter default “when a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or

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

12 /s/ *Michael J. Song*  
13 UNITED STATES MAGISTRATE JUDGE  
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