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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

ANTHONY SHORTER,

Plaintiff,

v.

R. ROSENTHAL, et al.,

Defendants.

CASE NO. 1:10-cv-00610-LJO-DLB PC

ORDER DENYING PLAINTIFF’S MOTION

(DOC. 29)

Plaintiff Anthony Shorter (“Plaintiff”) is a California state prisoner proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983. This action is proceeding on Plaintiff’s third amended complaint against Defendants R. Rosenthal, G. Doan, and S. Wortman for denial of access to the courts. Pending before the Court is Plaintiff’s motion, filed December 12, 2011, entitled “Notice of Motion, and Motion Requesting Summary Judgment in favor For Plaintiff.” Doc. 29. This motion is based on Defendants’ alleged failure to timely file a responsive pleading. Accordingly, the Court will treat the motion as a motion for entry of default pursuant to Rule 55. On December 28, 2011, Defendants filed their opposition. The matter is submitted pursuant to Local Rule 230(1).

“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 otherwise, the clerk must enter the party’s default.” Fed. R. Civ. P. 55(a). Plaintiff contends that Defendants failed to answer by the required deadline of December 7, 2011. Pl.’s Mot. 2. Plaintiff contends that he did not receive any communication from Defendants as of December 7, 2011, 8 p.m. *Id.* Thus,

1 Plaintiff requests that Defendants' failure to defend be treated as acquiescence to Plaintiff's  
2 alleged claims. *Id.*

3 Defendants contend that they did serve and file a responsive pleading by December 7,  
4 2011. Defs.' Opp'n, Doc. 28. A review of the Court's docket indicates that on December 7,  
5 2011, an answer from Defendants was filed. A proof of service was attached to the answer and  
6 dated December 7, 2011. Service by mail is effective upon mailing. Fed. R. Civ. P. 5(b)(2)(C).  
7 There is no evidence which demonstrates that Defendants did not comply with the December 7,  
8 2011 deadline for service and filing of a responsive pleading.

9 Accordingly, it is HEREBY ORDERED that Plaintiff's motion, filed December 12, 2011  
10 and construed as a motion for entry of default, is denied.

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IT IS SO ORDERED.

Dated: June 8, 2012

/s/ Dennis L. Beck  
UNITED STATES MAGISTRATE JUDGE