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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

BRIAN ELLIS PORTER,

Plaintiff,

v.

JAMES YATES, et al.,

Defendants.

CASE NO. 1:10-CV-01500-DLB PC

ORDER DENYING REQUEST FOR ENTRY OF DEFAULT

(DOC. 17)

Plaintiff Brian Ellis Porter ("Plaintiff") is a California state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding on Plaintiff's first amended complaint, filed June 3, 2011, against Defendant Cherylee Wegman. Pending before the Court is Plaintiff's request for entry of default, filed December 5, 2011. Doc. 17.

Plaintiff contends that Defendant Cherylee Wegman has failed to answer or otherwise respond to Plaintiff's complaint, and requests an entry of default accordingly. Plaintiff is correct that Defendant Cherylee Wegman has not responded. However, Plaintiff is incorrect when he asserts that Defendant Wegman has been served. As indicated on the order directing the United States Marshal to effect service, after the waiver of service is mailed, Defendant is granted sixty days in which to respond. Doc. 16. Additionally, the Marshal has not indicated that service was completed. Thus, entry of default against Defendant Wegman at this time is premature. Accordingly, it is HEREBY ORDERED that Plaintiff's request for entry of default, filed December 5, 2011, is DENIED.

IT IS SO ORDERED.

**Dated: December 20, 2011**

**/s/ Dennis L. Beck**  
UNITED STATES MAGISTRATE JUDGE