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7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF CALIFORNIA
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10 THOMAS GOOLSBY,

11 Plaintiff,

12 vs.

13 FERNANDO GONZALES, et al.,

14 Defendants.
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1:11-cv-00394-GSA-PC

ORDER DENYING PLAINTIFF'S
REQUESTS FOR ENTRY OF DEFAULT
AND TO OPEN DISCOVERY
(Docs. 20, 21.)

16 **I. BACKGROUND**

17 Thomas Goolsby ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis
18 with this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint
19 commencing this action on March 8, 2011. (Doc. 1.) On May 4, 2011, Plaintiff consented to
20 Magistrate Judge jurisdiction in this action pursuant to 28 U.S.C. § 636(c), and no other parties
21 have made an appearance. (Doc. 6.) Therefore, pursuant to Appendix A(k)(4) of the Local
22 Rules of the Eastern District of California, the undersigned shall conduct any and all
23 proceedings in the case until such time as reassignment to a District Judge is required. Local
24 Rule Appendix A(k)(3). This case now proceeds on Plaintiff's First Amended Complaint, filed
25 on September 17, 2012, against defendant T. Steadman for retaliation in violation of the First
26 Amendment.¹ (Doc. 13.)

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28 ¹ On April 22, 2013, the court dismissed all remaining claims and defendants from this action
based on Plaintiff's failure to state a claim. (Doc. 17.)

1 On September 6, 2013, Plaintiff filed a request for the court to open the discovery phase
2 for this action. (Doc. 20.) On October 9, 2013, Plaintiff filed a request for entry of default
3 against defendant T. Steadman. (Doc. 21.) Plaintiff's two requests are now before the court.

4 **III. DISCOVERY**

5 Plaintiff requests a court order commencing discovery, because it has been more than
6 four months since the court ordered service to be completed by the U.S. Marshals Service
7 ("Marshal"), and Plaintiff is eager to begin discovery.

8 Plaintiff is advised that the court will issue a scheduling order setting a schedule for
9 discovery after defendant Steadman has filed an Answer to the complaint. To date, defendant
10 Steadman has not filed an Answer. (Court Record.) Plaintiff has not shown good cause for the
11 court to allow him to conduct early discovery.

12 **II. ENTRY OF DEFAULT**

13 Entry of default is appropriate as to any party against whom a judgment for affirmative
14 relief is sought that has failed to plead or otherwise defend as provided by the Federal Rules of
15 Civil Procedure and where that failure is shown by affidavit or otherwise. See Fed. R. Civ. P.
16 55(a). Rule 12 of the Federal Rules of Civil Procedure provides, "[A] defendant must serve an
17 answer within 21 days after being served with the summons and complaint; or if it has timely
18 waived service under Rule 4(d), within 60 days after the request for a waiver was sent." Fed.
19 R. Civ. P. 12(a)(1)(A). Under Rule 4(d), a defendant may waive service of a summons by
20 signing and returning a waiver of service. Fed. R. Civ. P. 4(d). If a defendant fails to plead or
21 otherwise defend an action after being properly served with a summons and complaint, a
22 default judgment may be entered pursuant to Rule 55(a) of the Federal Rules of Civil
23 Procedure.

24 **Plaintiff's Request**

25 Plaintiff requests entry of default against defendant Steadman. Plaintiff asserts that on
26 May 6, 2013, the court ordered the Marshal to serve defendant Steadman with a copy of the
27 summons and complaint, and defendant Steadman has been served. Plaintiff argues that default

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1 should be entered against the defendant because approximately five months have elapsed, and
2 defendant Steadman has not filed a responsive pleading or made an appearance.

3 **Discussion**

4 Court records reflect that on May 6, 2013, the court issued an order directing the
5 Marshal to serve process in this action upon defendant Steadman. (Doc. 19.) To date, the court
6 has not received any notice that defendant Steadman was served or that service by the Marshal
7 was unsuccessful. (Court Record.) Plaintiff has not shown that Defendants were properly
8 served with process and failed to plead or otherwise defend pursuant to Rule 55(a). Fed. R.
9 Civ. P. 55(a). Therefore, Plaintiff's request for entry of default must be denied.

10 **IV. CONCLUSION**

11 Based on the foregoing, IT IS HEREBY ORDERED that:

12 1. Plaintiff's request for a court order opening discovery, filed on September 6,
13 2013, is DENIED; and

14 2. Plaintiff's request for entry of default against defendant Steadman, filed on
15 October 9, 2013, is DENIED.

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18 IT IS SO ORDERED.

19 Dated: **October 11, 2013**

20 **/s/ Gary S. Austin**
21 UNITED STATES MAGISTRATE JUDGE
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