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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

THOMAS GOOLSBY,
Plaintiff,

v.

GENTRY, et al.,
Defendants.

1:11cv01773 DLB PC

ORDER DENYING PLAINTIFF'S
REQUEST FOR ENTRY OF DEFAULT

(Document 35)

Plaintiff Thomas Goolsby ("Plaintiff") is a prisoner in the custody of the California Department of Corrections and Rehabilitation ("CDCR"). Plaintiff is proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on October 25, 2011.¹

On June 7, 2013, the Court issued an order finding service of the First Amended Complaint appropriate as to Defendants Gentry, Noyce, Eubanks, Tyree, Medrano, Holman, Holland, Steadman and Gutierrez and requiring Plaintiff to return service documents within thirty days.

Plaintiff submitted service documents on July 18, 2013, and the Court directed the United States Marshal to serve Defendants by order dated July 19, 2013.

On December 6, 2013, Plaintiff filed a request for entry of default against Defendant Holman.

Plaintiff is correct that eight of the nine Defendants have been served and have appeared in this action. Defendants filed a motion to dismiss on November 26, 2013, and the motion is pending.

¹ On December 5, 2011, Plaintiff consented to the jurisdiction of the United States Magistrate Judge.

1 Plaintiff is also correct that Defendant Holman has not appeared in this action. However,
2 contrary to Plaintiff's contention, there is no evidence in the record that service has been effected on
3 Defendant Holman, which would trigger his legal obligation to respond to Plaintiff's First Amended
4 Complaint. Fed. R. Civ. P. 4(d), (e); Fed. R. Civ. P. 55(a).

5 Pursuant to the waiver of service returned on December 3, 2013, all Defendants except for
6 Defendant Holman were served by mail on September 27, 2013, and waived service.

7 Plaintiff's motion is therefore premature absent evidence that Defendant Holman was served
8 and failed to respond.

9 Accordingly, Plaintiff's motion for entry of default is HEREBY DENIED. Fed. R. Civ. P.
10 55(a).

11 IT IS SO ORDERED.

12
13 Dated: December 17, 2013

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE