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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

KEVIN P. O’CONNELL,

CASE NO. 1:11-cv-02163-BAM PC

Plaintiff,

ORDER DENYING PLAINTIFF’S REQUEST
FOR DEFAULT JUDGMENT

v.

KERN VALLEY STATE PRISON, et al.,

(ECF No. 22)

Defendants.

Plaintiff Kevin P. O’Connell is a 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 the first amended complaint, filed June 25, 2012, against Defendants Howards, Northcutt, and Rodriguez for excessive force in violation of the Eighth Amendment and assault and battery in violation of state law. (ECF No. 19.) On July 26, 2012, an order issued directing the United States Marshal to initiate service on the defendants. Plaintiff filed a motion for a request for default judgment on October 12, 2012. (ECF No. 22.)

Entry of default is appropriate as to any party against whom a judgment for affirmative relief is sought that has failed to plead or otherwise defend as provided by the Federal Rules of Civil Procedure and where that fact is made to appear by affidavit or otherwise. Fed. R. Civ. P. 55(a). The court issued an order directing the United States Marshal to *initiate* service. Until defendants have either waived service and failed to respond within sixty days or been personally served and failed to respond within twenty days, they are not in default and plaintiff is not entitled to entry of default.

1 Further, pursuant to Federal Rules of Civil Procedure 55, obtaining a default judgment is a
2 two step process. Yue v. Storage Technology Corp., No. 3:07-cv-05850, 2008 WL 361142, *2
3 (N.D.Cal. Feb, 11, 2008). After entry of default, the plaintiff can seek entry of default judgment.
4 Fed. R. Civ. P. 55(b)(1) and (2). Plaintiff may not receive an entry of default judgment, because
5 there has been no entry of default against any defendant in this action.

6 Accordingly, Plaintiff's request for entry of default judgment, filed October 12, 2012, is
7 HEREBY DENIED.

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9 IT IS SO ORDERED.

10 **Dated: October 15, 2012**

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE

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