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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MARQUES BUTLER,)	Case No.: 1:12-cv--1538-SAB (PC)
)	
Plaintiff,)	
)	ORDER DENYING PLAINTIFF’S MOTION
v.)	FOR ENTRY OF DEFAULT
)	
R. WERN, et al.,)	[ECF No. 19]
)	
Defendants.)	
)	
)	
)	

Plaintiff Marques Butler is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

Now pending before the Court is Plaintiff’s motion for entry of default as to Defendant Wern.

This action is proceeding on Plaintiff’s claim of excessive force against Defendants Wern, Stratton, and Montano, and against Defendant Wern for deliberate indifference to a serious medical need.

On May 7, 2014, Defendants Montano and Stratton filed an answer to the complaint.

The United States Marshal was directed to initiate service on January 16, 2014, and the Marshal is still in the process of attempting to effectuate service on Defendant Wern. Thus, there is no evidence in the record that service has been effected, triggering Defendant’s legal obligation to

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1 respond to Plaintiff's complaint. Fed. R. Civ. P. 4(d), (e); Fed. R. Civ. P. 55(a). Indeed, the Court
2 notes that Defendant has an opportunity to waive service of the summons and amended complaint, and
3 should he elect to waive service, he has sixty days from the date set forth in the waiver to file a
4 response. Fed R. Civ. P. 4(d). Plaintiff's motion for entry of default is premature and therefore must
5 be DENIED.

6
7 IT IS SO ORDERED.

8 Dated: August 1, 2014



UNITED STATES MAGISTRATE JUDGE