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6 **UNITED STATES DISTRICT COURT**

7 EASTERN DISTRICT OF CALIFORNIA
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11 DION ANDERSON,) 1:13-cv-00378 AWI DLB PC
12 Plaintiff,)
13 vs.) FINDINGS AND RECOMMENDATION
14 K. KIMBRELL, et al.,) RECOMMENDING PLAINTIFF'S MOTION
15 Defendants.) TO ENTER DEFAULT BE DENIED
16) [ECF No. 28]
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Plaintiff Dion Anderson ("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. Plaintiff filed this action on March 15, 2013.

On October 18, 2013, the Court dismissed the complaint and granted Plaintiff leave to file a First Amended Complaint. On February 6, 2014, Plaintiff filed his First Amended Complaint. On March 24, 2014, he filed a motion for leave to file a Second Amended Complaint and lodged the proposed Second Amended Complaint. On August 26, 2014, the Court granted the motion to file a Second Amended Complaint. The Second Amended Complaint is currently pending screening by the Court.

On October 14, 2014, Plaintiff filed the instant motion for entry of default. Plaintiff contends that Defendants have neither filed an answer, extension of time, or entered the

1 appearance of an attorney within the time deadline. Plaintiff is advised that service of process
2 has not yet been effected on Defendants, triggering their obligation to respond to his complaint.
3 Fed. R. Civ. P. 4(e). In this case, the United States Marshal will be directed to initiate service of
4 process on Plaintiff's behalf when the Court has determined that Plaintiff's complaint states
5 cognizable claims for relief and service is appropriate. 28 U.S.C. § 1915(d); Fed. R. Civ. P.
6 4(c)(2). The Court has not yet screened the Second Amended Complaint. Therefore, service is
7 not yet appropriate.
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RECOMMENDATION

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10 For all of the foregoing reasons, this Court recommends that Plaintiff's motion to enter
11 default against Defendants be DENIED.

12 These Findings and Recommendations are submitted to the United States District Judge
13 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen
14 (14) days after being served with these Findings and Recommendations, the parties may file
15 written objections with the Court. The document should be captioned "Objections to Magistrate
16 Judge's Findings and Recommendations." The parties are advised that failure to file objections
17 within the specified time may waive the right to appeal the District Court's order. Martinez v.
18 Ylst, 951 F.2d 1153 (9th Cir. 1991).

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20 IT IS SO ORDERED.

21 Dated: October 17, 2014

/s/ Dennis L. Beck

22 UNITED STATES MAGISTRATE JUDGE
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