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8 **UNITED STATES DISTRICT COURT**  
9 **EASTERN DISTRICT OF CALIFORNIA**  
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11 PAUL WELDON,

12 Plaintiffs,

13 v.

14 JERRY DYER, et al.,

15 Defendants.  
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Case No. 1:13-cv-00540-LJO-SAB

ORDER DENYING MOTIONS FOR ENTRY  
OF DEFAULT

ECF NO. 30, 31, 32, 33

17 On January 27, 2014, Plaintiff Paul Weldon (“Plaintiff”), proceeding pro se in this action,  
18 filed motions for entry of default against Defendant Econo Towing as well as against Beryle  
19 Dodson, Marty Kodman and Robert Kodman. (ECF No. 30, 31, 32, 33.)

20 Beryle Dodson, Marty Kodman and Robert Kodman are not parties to this action.  
21 Plaintiff contends that these individuals were identified as “John Doe” defendants in the Second  
22 Amended Complaint. However, Plaintiff did not properly substitute these individuals for the  
23 John Doe defendants named in the Second Amended Complaint. Accordingly, nothing in the  
24 Second Amended Complaint or on the Court’s docket gave these individuals proper notice that  
25 they were parties to this action. Plaintiff’s attempt to serve them prematurely was defective. If  
26 Plaintiff wishes to add these individuals as parties to this action, he must file a motion to amend  
27 his complaint to substitute these individuals in place of the John Doe defendants named in the  
28 Second Amended Complaint.

1           Moreover, even if these individuals were properly substituted as parties in this action, the  
2 “Return of Service” forms filed by Plaintiff suggest that Plaintiff’s attempt to serve these  
3 individuals was defective. Under Federal Rule of Civil Procedure 4(e), an individual may be  
4 served by (1) delivering a copy of the summons and of the complaint to the individual  
5 personally, (2) leaving a copy of each at the individual’s dwelling or usual place of abode with  
6 someone of suitable age and discretion who resides there, (3) delivering a copy of each to an  
7 agent authorized by appointment or by law to receive service of process, or (4) any other method  
8 authorized by California law.

9           The Return of Service form submitted by Plaintiff only states that Beryle Dodson, Marty  
10 Kodman and Robert Kodman were served when the process server “left with receptionist sitting  
11 at front desk at Econo Towing office location 1523 N. Maple, Fresno, CA 93703.<sup>1</sup>” Under  
12 California law, substituted service of process in lieu of personal delivery is only permitted “if a  
13 copy of the summons and of the complaint cannot with reasonable diligence be personally  
14 delivered to the person to be served.” Cal. Code Civ. Proc. § 415.20(b). Plaintiff has not  
15 submitted any proof of reasonably diligent efforts to serve these individuals personally.  
16 Accordingly, the attempt at substituted service was ineffective. Moreover, substituted service  
17 requires Plaintiff to also mail a copy of the summons and complaint by first-class mail, postage  
18 prepaid, to the person and address where substituted service was attempted. Cal. Code Civ. Proc.  
19 § 415.20(b). Plaintiff has not submitted proof of such mail delivery.

20           Plaintiff’s proof of service with respect to Econo Towing is also defective. Plaintiff has  
21 not submitted any proof of service demonstrating proper service with respect to Econo Towing.  
22 To the extent that Plaintiff attempted substituted service on Econo Towing pursuant to California  
23 law, Plaintiff has not demonstrated the prerequisite “reasonable diligence” or that Plaintiff  
24 mailed the summons and complaint to the proper address.

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28 <sup>1</sup> The Return of Service for Beryle Dodson does not indicate that the summons and complaint was left with the  
receptionist. It is unclear how service was effectuated with respect to Beryle Dodson.

1 Based upon the foregoing, it is HEREBY ORDERED that Plaintiff's motions for entry of  
2 default are DENIED.

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4 IT IS SO ORDERED.

5 Dated: February 4, 2014

  
UNITED STATES MAGISTRATE JUDGE