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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

MARK S. SOKOLSKY,	)	1:13-cv-02044 LJO DLB PC
	)	
Plaintiff,	)	FINDINGS AND RECOMMENDATION
	)	RECOMMENDING PLAINTIFF’S MOTION
vs.	)	TO ENTER DEFAULT BE DENIED
	)	
CHRISTINE MATIVO, et al.,	)	[ECF No. 22]
	)	
Defendants.	)	

Plaintiff Mark S. Sokolsky (“Plaintiff”) is a civil detainee proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on December 16, 2013.

On September 11, 2015, Plaintiff filed a First Amended Complaint (“FAC”). He named the State of California, Christine Mativo, Rebecca Domrese, Audrey King, Alan Carlson, Brian Bowley, Marisa Bigot, Kamala Harris, and John/Jane Does 1 to 100 as Defendants. On July 27, 2015, the Court screened Plaintiff’s FAC and found that it stated the following claims: (1) violation of Plaintiff’s First Amendment rights to free exercise of religion by Defendants Mativo, Domrese, King, Bowley, and Bigot; (2) violation of RLUIPA by Defendants Mativo, Domrese, King, Bowley, and Bigot; and (3) violation of Plaintiff’s substantive due process rights by Defendants King, Mativo, and Domrese for conditions of confinement. The Court ordered

1 Plaintiff to file an amended complaint or notify the Court of his willingness to proceed only on  
2 these claims. On August 10, 2015, Plaintiff notified the Court that he wanted to proceed only on  
3 the cognizable claims identified above. Therefore, on August 18, 2015, the Court issued a  
4 Findings and Recommendation that the action proceed on the cognizable claims, and all other  
5 claims and defendants be dismissed. On September 14, 2015, the District Court adopted the  
6 Findings and Recommendation. Subsequently, on September 17, 2015, the Court issued an order  
7 directing the U.S. Marshal Service to initiate service of process on Plaintiff's behalf.  
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9 On December 4, 2015, Plaintiff filed the instant motion for entry of default. Plaintiff  
10 contends that Defendants have failed to plead or otherwise defend as provided by the Federal  
11 Rules of Civil Procedure.

12 In this case, the United States Marshal has been directed to initiate service of process on  
13 Plaintiff's behalf. Fed. R. Civ. P. 4(c)(3). Pursuant to the Court's order, the Marshals Service  
14 was directed to notify the Defendants of the commencement of the action and request a waiver of  
15 service. If a waiver of service is not returned by a Defendant within sixty days, the Marshals  
16 Service must then personally serve process upon the Defendants. There is no indication in this  
17 case that service of process has been effected upon Defendants, thereby triggering their  
18 obligation to respond to the complaint. Fed. R. Civ. P. 4(e). Therefore, Plaintiff's motion for  
19 default is premature.  
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### 21 **RECOMMENDATION**

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

24 These Findings and Recommendations are submitted to the United States District Judge  
25 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen  
26 (14) days after being served with these Findings and Recommendations, the parties may file  
27 written objections with the Court. The document should be captioned "Objections to Magistrate  
28

1 Judge's Findings and Recommendations." The parties are advised that failure to file objections  
2 within the specified time may waive the right to appeal the District Court's order. Martinez v.  
3 Ylst, 951 F.2d 1153 (9th Cir. 1991).  
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5 IT IS SO ORDERED.

6 Dated: December 9, 2015

7 /s/ Dennis L. Beck  
8 UNITED STATES MAGISTRATE JUDGE  
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