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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

ARCHIE CRANFORD,  
Plaintiff,  
v.  
AUDREY KING, et al.,  
Defendants.

**Case No. 1:14-cv-01002-MJS (PC)**  
**ORDER DENYING PLAINTIFF'S**  
**MOTION FOR DEFAULT JUDGMENT**  
**(ECF No. 9)**

Plaintiff is a civil detainee proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. The Complaint was dismissed for failure to state a claim. Plaintiff was granted leave to file an amended complaint by not later than August 18, 2014.

Before the Court is Plaintiff's August 11, 2014 motion for entry of default judgment.

Rule 55(a) of the Federal Rules of Civil Procedure requires that the Clerk of the Court enter default "when a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise." Fed. R. Civ. P. 55(a). Rule 55(b)(2) provides that the Court may grant a

1 default judgment after default has been entered by the Clerk of the Court.

2 Plaintiff's motion is premature. The Court has not yet found he has asserted a  
3 cognizable claim. If and when that occurs, the Court will order U.S. Marshal's service of  
4 the pleading, triggering Defendants obligation to respond. Fed. R. Civ. P. 4(d)(e); Fed.  
5 R. Civ. P. 55(a). Unless and until Defendants thereby become obligated to respond and  
6 fail to do so within the time allowed, Plaintiff may not seek entry of default and judgment  
7 thereon.  
8

9 Plaintiff is not presently entitled to default judgment because he has not  
10 demonstrated that Defendants have been served with process. He cannot so  
11 demonstrate because the Court has not yet found a cognizable claim and authorized  
12 service on Defendants. Absent service, the Court has no jurisdiction over Defendants.  
13 *Action Embroidery Corp. v. Atlantic Embroidery, Inc.*, 368 F.3d 1174, 1177 (9th Cir.  
14 2004); see also *Harry and David v. J & P Acquisition, Inc.*, 865 F.Supp.2d 494, 500 (D.  
15 Del. 2011) (absent proper service a defendant is not legally called to answer and entry  
16 of default is void).  
17

18 Accordingly, for the reasons stated above, it is HEREBY ORDERED that  
19 Plaintiff's motion for entry of default judgment against Defendants (ECF No. 9) is  
20 DENIED without prejudice.  
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22  
23 IT IS SO ORDERED.

24 Dated: August 23, 2014

25 /s/ Michael J. Seng  
26 UNITED STATES MAGISTRATE JUDGE  
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