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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

IVAN LEE MATTHEWS,

 Plaintiff,

 v.

HOLLAND,

 Defendant.

Case No. 1:14-cv-01959-SKO (PC)

**ORDER DENYING PLAINTIFF'S
REQUEST FOR ENTRY OF DEFAULT**

(Doc. 30)

Plaintiff, Ivan Lee Matthews, a state prisoner proceeding *pro se* and *in forma pauperis*, filed this civil rights action pursuant to 42 U.S.C. § 1983. The Court screened Plaintiff’s complaint pursuant to 28 U.S.C. § 1915A and found that it stated a claim for damages under the Eighth Amendment of the United States Constitution against Defendant Holland, the warden at California Correctional Institution (“CCI”). (Doc. 12.)

On December 29, 2015, Defendant filed a motion to dismiss (Doc. 15), which was granted with leave to amend, (Doc. 20). Plaintiff filed the First Amended Complaint (“FAC”) on July 1, 2016. (Doc. 21.) Defendant filed a second motion to dismiss the FAC (Doc. 22), which was denied (Doc. 26). The order denying Defendant’s second motion to dismiss was signed on March 22, 2017, and filed and served on March 23, 2017. (Doc. 26.) That order directed Defendant to file an answer to the FAC within thirty days of the date it was served on the parties. (*Id.*)

Defendant filed an answer on April 21, 2017. (Doc. 27.) On April 28, 2017, Plaintiff filed a motion seeking judgment by default, asserting that Defendant had not filed an answer.

1 (Doc. 30.)

2 The proof of service attached to Defendant's answer indicates that it was placed in the
3 mail for service on Plaintiff that same day. It appears that Plaintiff's motion for default and
4 Defendant's answer crossed in the mail. As Defendant's answer was timely filed -- in fact, one
5 day before the deadline -- entry of default is not appropriate.

6 Accordingly, it is HEREBY ORDERED that Plaintiff's request for entry of default, filed
7 April 28, 2017, (Doc. 30), is hereby DENIED.

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9 IT IS SO ORDERED.

10 Dated: May 2, 2017

/s/ Sheila K. Overt
UNITED STATES MAGISTRATE JUDGE

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