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6 **UNITED STATES DISTRICT COURT**

7 EASTERN DISTRICT OF CALIFORNIA

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9 ADRIAN ALEXANDER WOODARD,

10 Plaintiff,

11 v.

12 DR. WANG,

13 Defendant.

Case No. 1:16-cv-01089-SAB (PC)

ORDER DENYING PLAINTIFF’S MOTION  
FOR ENTRY OF DEFAULT JUDGMENT  
AGAINST DEFENDANT WANG FOR  
FAILURE TO ANSWER

[ECF No. 27]

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15 Plaintiff Adrian Alexander Woodard is a state prisoner appearing pro se in this civil  
16 rights action pursuant to 42 U.S.C. § 1983. All parties have consented to the jurisdiction of a  
17 United States Magistrate Judge pursuant to 28 U.S.C. § 636(c)(1). (ECF Nos. 6, 12.)

18 Currently before the Court is Plaintiff’s motion for an entry of default against Defendant  
19 Wang for the failure to answer the first amended complaint, filed on December 20, 2018. (ECF  
20 No. 27.) Plaintiff contends that Defendant Wang never answered the first amended complaint.

21 Plaintiff is mistaken; Defendant Wang timely filed an answer on December 22, 2017.  
22 (ECF No. 24.) On February 21, 2018, Defendant filed a declaration of counsel stating that after  
23 receiving Plaintiff’s motion, counsel discovered that the answer may not have been immediately  
24 served on Plaintiff due to a clerical error. Counsel could not locate a proof of service. Thus,  
25 counsel immediately served Plaintiff with a copy of the declaration and answer. (ECF No. 28.)

26 Certainly, it is critical that counsel timely serve Plaintiff with any filings in this action, as  
27 he lacks access to the Court’s online docketing system and does not receive notification of  
28 electronic filings via CM/ECF. Counsel is admonished that Plaintiff must be promptly served

1 with all of Defendant's filings. However, the Court finds that because Defendant Wang has not  
2 failed to answer or otherwise defend this action, entry of default is not appropriate, and  
3 Plaintiff's motion shall be denied.

4 Plaintiff further asserts in the motion that he was not served with Defendant's opposition  
5 to his request for a preliminary and permanent injunction in this case. He discovered this when  
6 he received the Court's January 22, 2018 order denying his request, which advised that  
7 Defendant had filed an opposition, and that the Court had not received any reply from Plaintiff.  
8 (ECF No. 26.)

9 Defense counsel declares that the same clerical error likely lead to Plaintiff not being  
10 served with the opposition, which was filed on the same day as the answer. Plaintiff was also  
11 served with the opposition on February 21, 2018, when the error was discovered.

12 Plaintiff seeks reconsideration of the January 22, 2018 order denying his request for a  
13 preliminary and permanent injunction pursuant to Federal Rule of Civil Procedure 59(e). Based  
14 on Defendant's failure to serve Plaintiff with the opposition to his request within the time  
15 permitted, the Court will allow Plaintiff an opportunity to file a motion for reconsideration  
16 addressing the opposition. Plaintiff must file the motion within **thirty (30) days** of the date of  
17 this order, and his motion will be promptly addressed. No response from Defendant will be  
18 required or permitted.

19 For these reasons, Plaintiff's motion for entry of default against Defendant Wang, filed  
20 on February 20, 2018 (ECF No. 27), is HEREBY DENIED.

21 IT IS SO ORDERED.

22 Dated: February 23, 2018

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25 UNITED STATES MAGISTRATE JUDGE  
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