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2
3 UNITED STATES DISTRICT COURT
4 EASTERN DISTRICT OF CALIFORNIA
5

6 TRAYVONE SMITH,

7 Plaintiff,

8 v.

9 EMMANUEL J. FANTONE and JASWANT
10 KHOKHAR,

11 Defendants.
12

Case No. 1:16-cv-01179 -EPG (PC)

ORDER DENYING PLAINTIFF’S MOTION
FOR DEFAULT JUDGMENT, GRANTING
PLAINTIFF LEAVE TO AMEND, AND
DIRECTING CLERK TO SEND PLAINTIFF
A COPY OF HIS SECOND AMENDED
COMPLAINT (ECF NO. 12) AND A CIVIL
RIGHTS COMPLAINT FORM

THIRTY DAY DEADLINE

(ECF NO. 19)

13
14 Trayvone Smith (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis*
15 in this civil rights action pursuant to 42 U.S.C. § 1983. On August 21, 2017, Plaintiff filed a
16 motion for default judgment. (ECF No. 19). Plaintiff asks for a default judgment in the
17 amount of \$25,000. Default has been entered against both defendant Fantone and defendant
18 Kohkar. (ECF No. 21).

19 Plaintiff’s motion for default judgment will be denied. “A default judgment must not
20 differ in kind from, or exceed in amount, what is demanded in the pleadings.” Fed. R. Civ. P.
21 54(c). Here, the operative complaint (ECF No. 12) does not request any form relief.
22 Accordingly, Plaintiff is not entitled to a \$25,000 default judgment.

23 Because Plaintiff did not request any form of relief in his complaint, the Court will give
24 Plaintiff thirty days to amend his complaint to add a prayer for relief.¹ Absent leave from the
25 Court, no other substantive changes should be made to the complaint.
26

27 ¹ Courts “should freely give leave [to amend] when justice so requires.” Fed. R. Civ. P. 15(a)(2). “[T]his
28 policy is to be applied with extreme liberality.” Morongo Band of Mission Indians v. Rose, 893 F.2d 1074, 1079
(9th Cir. 1990). See also Waldrup v. Hall, 548 F.3d 729, 732 (9th Cir. 2008).

1 The Court notes that, after it screens the Third Amended Complaint, Defendants will
2 need to be served with a copy of the Third Amended Complaint.

3 Accordingly, based on the foregoing, IT IS ORDERED that:

- 4 1. Plaintiff's motion for default judgment is DENIED;
- 5 2. Plaintiff has thirty (30) days from the date of service of this order to file a Third
6 Amended Complaint. Plaintiff shall caption the amended complaint "Third
7 Amended Complaint" and refer to the case number 1:16-cv-01179-EPG (PC).
8 The amended complaint shall include a prayer for relief. No other substantive
9 changes shall be made to the complaint; and
- 10 3. The Clerk of Court is directed to send Plaintiff a copy of his Second Amended
11 Complaint (ECF No. 12) and a civil rights complaint form

12 IT IS SO ORDERED.

13
14 Dated: September 14, 2017

/s/ Eric P. Gray
15 UNITED STATES MAGISTRATE JUDGE