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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

HUMBERTO URQUIZA,  
Plaintiff,  
v.  
T. YODER,  
Defendant.

Case No. 1:16-cv-01563-LJO-MJS (PC)  
**ORDER DENYING REQUEST FOR ENTRY  
OF DEFAULT**  
(ECF No. 16)

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action brought pursuant to 28 U.S.C. § 1983. The action proceeds on Plaintiff's Eighth Amendment claim against Defendant Yoder. (ECF No. 9.)

On October 16, 2017, Defendant Yoder timely responded to the complaint by filing a motion to dismiss. (ECF No. 15.) See Fed. R. Civ. P. 12(a)(4), 12(b). On October 20, 2017, Plaintiff moved for entry of default. (ECF No. 16.)

Federal Rule of Civil Procedure 55(a) requires the Clerk of Court to enter default against a party when that party has "failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise." Here, Defendant Yoder timely responded to Plaintiff's

1 complaint. There is no basis for entering default against him.

2 Accordingly, Plaintiff's request for entry of default is HEREBY DENIED.

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4 IT IS SO ORDERED.

5 Dated: November 28, 2017

1st Michael J. Seng  
UNITED STATES MAGISTRATE JUDGE

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