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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PETER GERARD WAHL,
Plaintiff,
v.
SUTTON, et al.,
Defendants.

Case No. 1:16-cv-01576-LJO-BAM (PC)
ORDER DENYING MOTION FOR ENTRY
OF DEFAULT
(ECF No. 39)

Plaintiff Peter Gerard Wahl (“Plaintiff”) is a former state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds against Defendant Sutton for deliberate indifference resulting from excessive custody, in violation of the Eighth Amendment.

On September 20, 2018, the Court directed the United States Marshal to initiate service of the operative complaint and summons on Defendant Sutton. (ECF No. 38.) Plaintiff filed a request for entry of default on October 31, 2018. (ECF No. 39.)

Entry of default is appropriate as to any party against whom a judgment for affirmative relief is sought that has failed to plead or otherwise defend as provided by the Federal Rules of Civil Procedure and where that fact is made to appear by affidavit or otherwise. Fed. R. Civ. P. 55(a). The Court issued an order directing the United States Marshal to *initiate* service. Until Defendant Sutton has either waived service and failed to respond within sixty days, or has been

1 personally served and failed to respond within twenty-one days, Defendant is not in default and
2 Plaintiff is not entitled to entry of default.

3 Accordingly, Plaintiff's motion for entry of default, (ECF No. 39), is DENIED.

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5 IT IS SO ORDERED.

6 Dated: November 2, 2018

/s/ Barbara A. McAuliffe
7 UNITED STATES MAGISTRATE JUDGE

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