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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ROBERT VELEZ, Jr.,
Plaintiff,
v.
LEWIS, et. al.,
Defendants.

Case No. 1:17-cv-00026-DAD-SKO (PC)
**FINDINGS AND RECOMMENDATION
TO DENY PLAINTIFF'S MOTION FOR
DEFAULT JUDGMENT**
(Doc. 10)
THIRTY (30) DAY DEADLINE

Plaintiff, Robert Velez, Jr., a state inmate proceeding *pro se* and *in forma pauperis*, filed this civil rights action pursuant to 42 U.S.C. § 1983. On March 6, 2017, Plaintiff filed a motion requesting a default judgment against the defendants, since they have not filed either a motion to dismiss or an answer to the Complaint. (Doc. 10.) Plaintiff requests that default be entered and the defendants be required to file a response to the Complaint. (*Id.*)

The First Informational Order informed Plaintiff that 28 U.S.C. § 1915A(a) requires the Court to screen Plaintiff's complaint. (Doc. 4, p. 3.) After the Court finds that Plaintiff has stated a cognizable claim, the United States Marshal will be ordered to initiate service on the defendants. (*Id.*) The date a responsive pleading is due is calculated from the date of service and depends on the method of service. As an initial matter and as stated in the recently issued screening order, Plaintiff has not stated a cognizable claim upon which relief may be granted. Since Plaintiff has not yet stated a cognizable claim, his complaint has not been served on the defendants. If Plaintiff is able to state a cognizable claim, service will be initiated by the United States Marshal, and responses will become due. Until that time, no responsive pleadings are due

1 from the defendants.

2 Accordingly, the Court **HEREBY RECOMMENDS** that Plaintiff's motion for default
3 judgment, filed on March 6, 2017, (Doc. 10), be **DENIED** as premature.

4 These Findings and Recommendations will be submitted to the United States District
5 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). **Within 30**
6 **days** after being served with these Findings and Recommendations, the parties may file written
7 objections with the Court. Local Rule 304(b). The document should be captioned "Objections to
8 Magistrate Judge's Findings and Recommendations." Failure to file objections within the
9 specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834,
10 839 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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12 IT IS SO ORDERED.

13 Dated: May 16, 2017

/s/ Sheila K. Overt
14 UNITED STATES MAGISTRATE JUDGE

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