1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 EASTERN DISTRICT OF CALIFORNIA 9 10 11 JAMES MILLNER, Case No.: 1:17-cv-00507-SAB (PC) 12 Plaintiff, ORDER DENYING PLAINTIFF'S MOTION FOR ENTRY OF DEFAULT JUDGMENT 13 v. [ECF No. 76] DR. DILEO, et al., 14 15 Defendants. 16 17 18 Plaintiff James Millner is proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 19 1983. Both parties have consented to Magistrate Judge jurisdiction pursuant to 28 U.S.C. § 636(c)(1). 20 (ECF No. 55.) 21 Currently before the Court is Plaintiff's motion for entry of default judgment, filed on July 14, 22 2020. Plaintiff contends that he filed a motion for summary judgment on May 12, 2020, but 23 Defendants have failed to file an opposition or statement of non-opposition. Plaintiff's motion must 24 be denied. 25 Because entry of default is a prerequisite to a default judgment, see Fed. R. Civ. P. 55, the 26 Court construes Plaintiff's motion as a motion for entry of default under Rule 55(a). Entry of default is 27 appropriate when "party against whom a judgment for affirmative relief is sought has failed to plead or 28 otherwise defend, and that failure is shown by affidavit or otherwise." Fed. R. Civ. P. 55(a).

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Here, Defendants have not failed to plead or otherwise defend this action. In fact, on June 17, 2020, Defendants timely filed a motion for an extension of time to file a response to Plaintiff's motion for summary judgment, which is currently due on or before July 29, 2020. (ECF No. 71.) Accordingly, Plaintiff's motion for entry of default is DENIED.

IT IS SO ORDERED.

Dated: **July 15, 2020**

UNITED STATES MAGISTRATE JUDGE

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