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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

STEVEN WILLIAMS,

Plaintiff,

No. CIV S-06-2381 FCD KJM P

vs.

D.L. RUNNELS, et al.,

Defendants.

ORDER AND

FINDING AND RECOMMENDATIONS

\_\_\_\_\_/

Plaintiff is a prisoner who is proceeding pro se and in forma pauperis. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983. He has filed a motion for an order directing the U.S. Marshal to comply with the court’s order to serve defendant Dial. He has also filed a motion for default judgment for (1) “the service of process on defendant Dial” and (2) “the late answer upon [sic] defendants.” Mot. at 1 (Docket No. 63).<sup>1</sup>

Plaintiff is incorrect to aver that the Marshal has failed to comply with the court’s order. Process directed to defendant Dial was returned unserved because the Marshal was unable to locate him. See Docket No. 45. The Marshal’s office has therefore fulfilled its

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<sup>1</sup> The motion for default judgment has also been docketed as one for sanctions against defendants. The text of the motion is not easy to follow, but it is fairly clear that plaintiff seeks a default judgment as a sanction for perceived delay tactics by the defendants who, unlike Dial, have been served with the second amended complaint.

1 obligation under the court's order, and plaintiff must provide additional information to serve  
2 Dial. Plaintiff shall promptly seek such information through discovery, the California Public  
3 Records Act, Calif. Gov't Code § 6250, et seq., or other means available to plaintiff. If access to  
4 the required information is denied or unreasonably delayed, plaintiff may seek judicial  
5 intervention.

6 Plaintiff will have sixty days from the date of this order in which to provide the  
7 information necessary to serve Dial, along with the completed service documents. Failure to  
8 provide the necessary information may result in dismissal of the claims against Dial. The motion  
9 to order the Marshal to comply with the court's previous service order will be denied.

10 The motion for default judgment is also misplaced. First, as to defendant Dial, no  
11 entry of default is warranted because Dial has not been served with the second amended  
12 complaint. As to the other defendants, an entry of default as a sanction for alleged delay tactics  
13 is not warranted for several reasons. Primarily, a default judgment would be inappropriate  
14 because defendants have not done anything to delay the pace of adjudication in this case. More  
15 generally, default is an appropriate sanction only in the most extreme instances of party  
16 misconduct or abuse of the judicial process. No such circumstance exists here. Finally,  
17 Fed.R.Civ.P. 12(c), which plaintiff cites in support of his motion, does not provide for default  
18 judgments or sanctions. For all of these reasons, the court will recommend that the motion for a  
19 default judgment be denied.

20 Accordingly, IT IS HEREBY ORDERED that:

21 1. The motion for an order directing the Marshal to comply with the court's  
22 previous service order (Docket No. 59) is denied;

23 2. The Clerk of the Court is directed to send to plaintiff one USM-285 form,  
24 along with an instruction sheet and a copy of the second amended complaint filed March 17,  
25 2008; and

26 ///

1           3. Within sixty days from the date of this order, plaintiff shall complete and  
2 submit the attached Notice of Submission of Documents to the court, with the following  
3 documents:

4                   a. One completed USM-285 form for defendant Dial; and

5                   b. Two copies of the second amended complaint filed March 17, 2008.

6                   IT IS HEREBY RECOMMENDED that the motion for default judgment as a  
7 sanction against defendants (Docket No. 63) be denied.

8                   These findings and recommendations are submitted to the United States District  
9 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-  
10 one days after being served with these findings and recommendations, any party may file written  
11 objections with the court and serve a copy on all parties. Such a document should be captioned  
12 “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections  
13 shall be served and filed within fourteen days after service of the objections. The parties are  
14 advised that failure to file objections within the specified time may waive the right to appeal the  
15 District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

16 DATED: January 15, 2010.

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19 U.S. MAGISTRATE JUDGE

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Plaintiff,

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Defendants.

NOTICE OF SUBMISSION  
OF DOCUMENTS

\_\_\_\_\_ /

Plaintiff hereby submits the following documents in compliance with the court's order filed \_\_\_\_\_

\_\_\_\_\_:

\_\_\_\_\_ completed summons form

\_\_\_\_\_ completed USM-285 forms

\_\_\_\_\_ copies of the \_\_\_\_\_  
Complaint/Amended Complaint

DATED:

\_\_\_\_\_  
Plaintiff