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

CLARENCE A. GIPBSIN,

Plaintiff,

No. CIV S-07-0157 MCE EFB P

vs.

SCOTT KERNAN, et al.,

Defendants

ORDER

_____/

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. On October 19, 2009, plaintiff requested that a default judgment be entered against defendants Deforest, Shelton, Prater, Goni, and Stone. Federal Rule of Civil Procedure 55(a) states that “[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend . . . the clerk must enter the party’s default.” Fed. R. Civ. P. 55(a). Defendants timely served their answer on October 9, 2009. Thus, defendants have not “failed to plead or otherwise defend” and plaintiff has not shown he is entitled to default.

Accordingly, the Clerk of the Court shall not enter defendants’ default and plaintiff’s October 19, 2009, motion is denied..

So ordered.

Dated: October 26, 2009.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE