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

TIMOTHY DEMOND BARRY,  
  
Plaintiff,  
  
vs.  
  
T. FELKER, *et al.*,  
  
Defendants.

Case No. 2:08-cv-01722-PMP-GWF

**FINDINGS AND  
RECOMMENDATIONS**

Motion for Default Judgment (Dkt. #14)

This matter is before the Court on Plaintiff’s Motion for Default Judgment (Dkt. #14), filed September 11, 2009. Plaintiff argues that the Court should issue default judgment because Defendants have not responded to Plaintiff’s Complaint.

The Court will recommend that Plaintiff’s Motion for Default Judgment be denied. (Dkt. #14). Default judgments are ordinarily disfavored by the Courts. *Pena v. Seguros La Comercial, S.A.*, 770 F.2d 811, 814 (9th Cir.1985). Cases should be decided upon their merits whenever reasonably possible. *Id.* In this instance, thirteen days after Plaintiff filed this motion, on September 24, 2009, Defendants filed an answer to Plaintiff’s Complaint. (Dkt. #15). As a result, Plaintiff’s argument that Defendants have failed to respond is moot. Accordingly,

**IT IS HEREBY RECOMMENDED** that Plaintiff’s Motion for Default Judgment (Dkt. #14) should be **denied**.

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