| (PC) Barry v. | Felker et al | Doc. 18 |
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| 5 | UNITED STATES D | DISTRICT COURT |
| 6 | FOR THE EASTERN DISTRICT OF CALIFORNIA | |
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| 8 | TIMOTHY DEMOND BARRY, | |
| 9 | Plaintiff, | Case No. 2:08-cv-01722-PMP-GWF |
| 10 | vs. | FINDINGS AND RECOMMENDATIONS |
| 11 | T. FELKER, et al., | Motion for Default Judgment (Dkt. #14) |
| 12 | Defendants. | Wiotion for Delauft stagment (DRt. 1/14) |
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| 14 | This matter is before the Court on Plaintiff's Motion for Default Judgment (Dkt. #14), filed | |
| 15 | September 11, 2009. Plaintiff argues that the Court should issue default judgment because Defendants | |
| 16 | have not responded to Plaintiff's Complaint. | |
| 17 | The Court will recommend that Plaintiff's Motion for Default Judgment be denied. (Dkt. #14). | |
| 18 | Default judgments are ordinarily disfavored by the Courts. Pena v. Seguros La Comercial, S.A., 770 | |
| 19 | F.2d 811, 814 (9th Cir.1985). Cases should be decided upon their merits whenever reasonably possible. | |
| 20 | <i>Id.</i> In this instance, thirteen days after Plaintiff filed this motion, on September 24, 2009, Defendants | |
| 21 | filed an answer to Plaintiff's Complaint. (Dkt. #15). As a result, Plaintiff's argument that Defendants | |
| 22 | have failed to respond is moot. Accordingly, | |
| 23 | IT IS HEREBY RECOMMENDED that Plaintiff's Motion for Default Judgment (Dkt. #14) | |
| 24 | should be denied . | |
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NOTICE

| These Findings and Recommendations are submitted to the United States District Judge |
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| assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(l). Within twenty (20) days |
| after being served with these Findings and Recommendations, plaintiff may file written objections with |
| the court. Such a document should be captioned "Objections to Magistrate Judge's Findings and |
| Recommendations." Plaintiff is advised that failure to file objections within the specified time may |
| waive the right to appeal the District Court's order. <i>Martinez v. Ylst</i> , 951 F.2d 1153 (9th Cir. 1991). |
| DATED this 6th day of October 2000 |

GEORGE FOLEY, JR. United States Magistrate Judge

DATED this 6th day of October, 2009.

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