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

KYLE AVERY,

No. CIV S-08-2605-CMK-P

Plaintiff,

vs.

ORDER

JAMES WALKER, et al.,

Defendants.

_____ /

Plaintiff, a state prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff’s motion (Doc. 24) entitled “Motion to Court Judge to Vacate Clerk’s Declination to Enter Default Against Defense Per Fed. R. Civ. P. With Supporting Documents.” Plaintiff’s motion is denied. The Clerk of the Court properly declined to enter defendants’ default because a responsive pleading had been timely filed.

IT IS SO ORDERED.

DATED: August 6, 2009



CRAIG M. KELLISON
UNITED STATES MAGISTRATE JUDGE