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

FRED WAYNE GILBERT,

No. CIV S-09-0209-CMK-P

Plaintiff,

vs.

ORDER

SUSAN HUBBARD, 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 are: (1) plaintiff’s request for entry of default (Doc. 40); and (2) plaintiff’s motion for default judgment (Doc. 41).

This action proceeds as against defendants Hubbard, Fox, Simmons, Bradley, Wright, and Finn. Defendants Fox, Simmons, and Hubbard have been served and have timely answered the complaint (see Doc. 29 & 38). Therefore, entry of default as to them is not appropriate. See Fed. R. Civ. P. 55(a). Because there is no indication that defendants Bradley, Wright, or Finn have been served, they are currently under no obligation to respond to the complaint. For this reason, entry of default as to these three unserved defendants would also not be appropriate at this time. See id. Finally, because entry of default is not appropriate as to any

1 defendant, plaintiff is not entitled to a default judgment. See Fed. R. Civ. P. 55(b).

2 The court will monitor for service of the remaining unserved defendants and issue
3 a scheduling order as to all served and appearing defendants at a later date.

4 Accordingly, IT IS HEREBY ORDERED that:

5 1. Plaintiff's request for entry of default (Doc. 40) is denied and the Clerk of
6 the Court is instructed not to enter the default of any defendant; and

7 2. Plaintiff's motion for default judgment (Doc. 41) is denied.

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9 DATED: November 9, 2009

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11 **CRAIG M. KELLISON**
12 UNITED STATES MAGISTRATE JUDGE
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