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

ELBERT LEE VAUGHT, IV

Plaintiff,

No. CIV S-09-3422 CKD P

vs.

D. CLARK, et al.

Defendant.

ORDER

Plaintiff is a state prisoner proceeding without counsel in an action under 42 U.S.C. § 1983. He has moved for a default judgment against defendant Davey, alleging that Davey has failed to respond to the complaint. In fact, Davey has responded to the complaint by joining the motion to dismiss filed September 10, 2010. See Docket No. 22. Under Federal Rule of Civil Procedure 12(b), a defendant may move to dismiss all claims against him in lieu of filing an answer. There is no basis for entering default against defendant Davey. Therefore the motion for default judgment shall be dismissed. The court will render a decision on the motion to dismiss forthwith.

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Accordingly, IT IS HEREBY ORDERED that:

1. The motion for default judgment (Docket No. 25) is denied.
2. The Clerk of Court is directed to assign a district judge to this case.

Dated: November 18, 2011

  
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CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

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