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

10 ANTHONY R. TURNER,

11 Plaintiff,

No. 2: 09-cv-3445 GEB KJN P

12 vs.

13 WILLIAM G. DOUGLAS, et al.,

14 Defendant.

ORDER

15 _____/
16 Plaintiff is a state prisoner proceeding without counsel with a civil rights action
17 pursuant to 42 U.S.C. § 1983. Pending before the court are plaintiff's February 24, 2011 motion
18 to compel (Dkt. No. 52), March 16, 2011 motion for default (Dkt. No. 53), and March 16, 2011
19 motion for sanctions (Dkt. No. 54). For the following reasons, these motions are denied.

20 Motion to Compel

21 Plaintiff claims that on January 18, 2011 he served defendants with a request for
22 production of documents and a subpoena to which they failed to respond. In their opposition,
23 defendants state that they received requests for productions of documents from plaintiff signed
24 by him on March 3, 2011 and March 4, 2011. The December 30, 2011 scheduling order
25 provided that all discovery requests were to be served not later than sixty days prior to April 15,
26 2011. Defendants state that they sent plaintiff objections to both requests for production on the

1 grounds that they were untimely.

2 Defendants' opposition does not clearly state that they did not receive a request
3 for production of documents from plaintiff on or around January 18, 2011. However, plaintiff's
4 motion to compel does not contain a copy of the request for production of documents he
5 allegedly served on defendants on January 18, 2011. Because plaintiff has not demonstrated that
6 he served defendants with a request for production of documents on January 18, 2011, and
7 because the requests for production served on defendants in March 2011 were untimely, the
8 motion to compel is denied.

9 Motion for Default

10 Plaintiff requests that default be entered based on defendants' alleged failure to
11 respond to his discovery requests, including a subpoena. Plaintiff does not identify these
12 discovery requests, nor does he include a copy of the subpoena. In the opposition to this motion,
13 defendants state that plaintiff has not served a subpoena on them.

14 Discovery disputes are not appropriately raised in motions for entry of default.
15 See Fed. R. Civ. P. 55. Construing the motion for default as a motion to compel, plaintiff has not
16 demonstrated that defendants failed to respond to a discovery request or a subpoena. For these
17 reasons, this motion is denied.

18 Motion for Sanctions

19 Plaintiff moves for sanctions against defendants based on their alleged failure to
20 respond to his discovery requests. Plaintiff alleges that he "has a right to discovery by a
21 subpoena duces tecum." Attached to the motion is a subpoena signed by plaintiff on March 11,
22 2011. However, the proof of service for the subpoena is unsigned.

23 Defendants address plaintiff's motion for sanctions in their opposition to his
24 motion for default. Defendants observe that this subpoena lists no date, time or location for the
25 deposition or production of documents.


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1 Plaintiff has not demonstrated that sanctions should be imposed on defendants
2 based on their alleged failure to respond to his discovery requests. Accordingly, the motion for
3 sanctions is denied.

4 Accordingly, IT IS HEREBY ORDERED that:

- 5 1. Plaintiff's motion to compel (Dkt. No. 52) is denied;
- 6 2. Plaintiff's motion for default (Dkt. No. 53) is denied;
- 7 3. Plaintiff's motion for sanctions (Dkt. No. 54) is denied.

8 DATED: April 6, 2011

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11 KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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