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

10 GORDON DALE MEADOR,

11 Plaintiff,

No. CIV S-10-0901 FCD DAD P

12 vs.

13 WEDELL, et al.,

14 Defendants.

ORDER

15 _____/
16 Plaintiff is a state prisoner proceeding pro se with a civil rights complaint
17 pursuant to 42 U.S.C. § 1983. Plaintiff has filed two motions seeking entry of default judgment
18 against the defendants and requesting wage garnishments and liens on the defendants' personal
19 and real property. Court records indicate that on October 29, 2010, the court filed an order
20 directing the United States Marshal to serve process on defendants Bobbola and Wedell. On
21 March 15, 2011, defendants filed their answer in this action.

22 Plaintiff argues that defendants failed to file a response to the complaint within
23 sixty days. (Doc. No. 26 at 2.) However, court records do not indicate the day on which
24 defendants were served nor whether defendants waived service pursuant to Rule 4(d) of the
25 Federal Rules of Civil Procedure. Moreover, the court has discretion to grant or deny an
26 application for default judgment, and may consider a number of factors including: (1) the

1 possibility of prejudice to the plaintiff; (2) the merits of the plaintiff's substantive claim; (3) the
2 sufficiency of the complaint; (4) the sum of money at stake in the action; (5) the possibility of
3 dispute concerning material facts; (6) whether the default was due to excusable neglect; and (7)
4 the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the
5 merits. Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir.1986). These factors have not been
6 adequately addressed by plaintiff in his motions. Most importantly, the court is mindful of the
7 final factor noted above. Considering that factor, even when a technical default has occurred,
8 there remains a strong policy to allow the action to be tried on the merits.

9 Accordingly, IT IS HEREBY ORDERED that:

10 1. Plaintiff's January 10, 2011 motion for default judgment (Doc. No. 26) is
11 denied; and

12 2. Plaintiff's February 10, 2011 motion for default judgment (Doc. No. 30) is
13 denied.

14 DATED: April 5, 2011.

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DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE