

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

GORDON DALE MEADOR,

Plaintiff, No. CIV S-10-0901 FCD DAD F

VS.

WEDELL, et al.,

Defendants. ORDER

Plaintiff is a state prisoner proceeding pro se with a civil rights complaint

pursuant to 42 U.S.C. § 1983. Plaintiff has filed two motions seeking entry of default judgment against the defendants and requesting wage garnishments and liens on the defendants' personal and real property. Court records indicate that on October 29, 2010, the court filed an order directing the United States Marshal to serve process on defendants Bobbola and Wedell. On March 15, 2011, defendants filed their answer in this action.

Plaintiff argues that defendants failed to file a response to the complaint within sixty days. (Doc. No. 26 at 2.) However, court records do not indicate the day on which defendants were served nor whether defendants waived service pursuant to Rule 4(d) of the Federal Rules of Civil Procedure. Moreover, the court has discretion to grant or deny an 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.

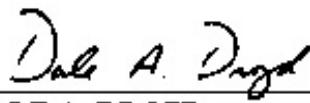
9 Accordingly, IT IS HEREBY ORDERED that:

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