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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANTHONY PENTON,

 Plaintiff,

 v.

L. JOHNSON, et al.,

 Defendants.

No. 2:11-cv-0518 TLN KJN P

FINDINGS AND RECOMMENDATIONS

Plaintiff, a state prisoner, proceeds through counsel with a civil rights action. Plaintiff’s motion for default judgment against defendant Jolene Nunez is pending. None of the appearing defendants filed an opposition or other response to the motion. As set forth below, plaintiff’s motion for default judgment should be denied without prejudice.

I. Plaintiff’s Fourth Amended Complaint

This action proceeds on plaintiff’s fourth amended complaint. (ECF No. 104.) Plaintiff’s claims against defendant Nunez, a mailroom staff member at CSP-SAC, who also conducted an informal level review of plaintiff’s second 602 appeal (ECF No. 104 at 14), are raised in plaintiff’s first and second causes of action.

In his first cause of action, in relevant part, plaintiff alleges that defendants Johnson, Nunez, and Does 1-11 violated plaintiff’s right to access the courts in violation of the First and Fourteenth Amendments. (ECF No. 104 at 20-21.) As a result, plaintiff was not able to timely

1 file documents in his habeas action. In his second cause of action, in relevant part, plaintiff
2 alleges that defendants Johnson, Nunez, and Does 1-11, wrongfully withheld plaintiff's mail
3 without notice and with no legitimate penological reasons, from November 8, 2007, through July
4 29, 2008. (ECF No. 104 at 25.)

5 II. Plaintiff's Motion

6 Plaintiff moves for default judgment against defendant Jolene Nunez. (ECF No. 226.)
7 Plaintiff accomplished service of process on defendant Jolene Nunez on June 13, 2018, and filed
8 a proof of service of summons attesting to proper service. (ECF No. 125.) The Clerk entered
9 default against defendant Nunez on October 3, 2018. (ECF No. 142; see also ECF No. 141.)

10 III. Default Judgment

11 A. Standards

12 Once default has been entered, the plaintiff may apply to the Court for entry of default
13 judgment pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure. Generally, default
14 judgments are disfavored. See Eitel v. McCool, 782 F.2d 1470, 1472 (9th Cir. 1986). The choice
15 whether a default judgment should be entered is at the sole discretion of the district court. See
16 Aldabe v. Aldabe, 616 F.2d 1089, 1092 (9th Cir. 1980); Lau Ah Yew v. Dulles, 236 F.2d 415,
17 416 (9th Cir. 1956) ("It is conceded that the grant or denial of a motion for the entry of a default
18 judgment is within the discretion of the court.").

19 In an action with multiple defendants, entry of default judgment must comply with Fed.
20 R. Civ. P. 54, which states:

21 When an action presents more than one claim for relief -- whether as
22 a claim, counterclaim, crossclaim, or third-party claim -- or when
23 multiple parties are involved, the court may direct entry of a final
24 judgment as to one or more, but fewer than all, claims or *parties only*
25 *if the court expressly determines that there is no just reason for delay.*
26 Otherwise, any order or other decision, however designated, that
27 adjudicates fewer than all the claims or the rights and liabilities of
28 fewer than all the parties does not end the action as to any of the
claims or parties and may be revised at any time before the entry of
a judgment adjudicating all the claims and all the parties' rights and
liabilities.

27 Fed. R. Civ. P. 54 (emphasis added).

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1 The leading case on the subject of default judgments in actions
2 involving multiple defendants is Frow v. De La Vega, 15 Wall. 552,
3 82 U.S. 552, 21 L.Ed. 60 (1872). The Court held in Frow that, where
4 a complaint alleges that defendants are jointly liable and one of them
defaults, judgment should not be entered against the defaulting
defendant until the matter has been adjudicated with regard to all
defendants.

5 In re First T.D. & Inv., Inc., 253 F.3d 520, 532 (9th Cir. 2001). The Ninth Circuit “extended the
6 rule beyond jointly liable co-defendants to those that are similarly situated, such that the case
7 against each rests on the same legal theory; it would be incongruous and unfair to allow a plaintiff
8 to prevail against defaulting defendants on a legal theory rejected by a court with regard to an
9 answering defendant in the same action.” Garamendi, 683 F.3d at 1082-83) (internal citations
10 omitted).

11 B. Discussion

12 The court finds that in this case, where the First and Fourteenth Amendment claims
13 against defendant Nunez are factually intertwined with the First and Fourteenth Amendment
14 claims against defendant Johnson and the remaining Doe defendants, it would be inappropriate to
15 enter default judgment before the claims against the remaining defendants have been adjudicated.
16 Defendant Nunez and defendant Johnson are similarly situated given that plaintiff’s First and
17 Fourteenth Amendment claims against them are based upon the same or a closely related set of
18 facts. Recently the undersigned recommended that summary judgment motions be denied as to
19 plaintiff’s First and Fourteenth Amendment claims against defendant Johnson; thus, such claims
20 are ongoing. Plaintiff’s claims against defendant Nunez may ultimately be appropriate for entry
21 of default judgment. However, the undersigned finds that ruling on the motion for default
22 judgment at this stage of the proceedings may end in inconsistent judgments or logically
23 inconsistent results. Under these circumstances, there is just reason for delay in entering default
24 judgment as to defendant Nunez. Therefore, the undersigned recommends that plaintiff’s motion
25 for default judgment be denied without prejudice to its renewal once all other claims against the
26 remaining defendants have been fully adjudicated.

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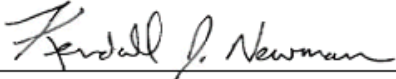
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1 IV. Recommendations

2 Accordingly, IT IS HEREBY RECOMMENDED that plaintiff's renewed motion for
3 default judgment (ECF No. 226) be denied without prejudice.

4 These findings and recommendations are submitted to the United States District Judge
5 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
6 after being served with these findings and recommendations, any party may file written
7 objections with the court and serve a copy on all parties. Such a document should be captioned
8 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the
9 objections shall be filed and served within fourteen days after service of the objections. The
10 parties are advised that failure to file objections within the specified time may waive the right to
11 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

12 Dated: February 16, 2022

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15 KENDALL J. NEWMAN
16 UNITED STATES MAGISTRATE JUDGE

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