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

LOUIS J. BROUSSARD,

No. 2:12-CV-0984-CMK-P

Plaintiff,

vs.

ORDER

K. HIGGINS,

Defendant.

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Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff’s motion for entry of default (Doc. 13).

Plaintiff is requesting the court to enter the default against the defendants pursuant to Federal Rule of Civil Procedure 55, alleging the defendants failed to answer or otherwise defend in this matter.

A defendant is not in “default” unless he “has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise.” Fed. R. Civ. Proc. 55(a). A party generally has 20 after being served with the summons and complaint to file a responsive pleading. See Fed. R. Civ. Proc. 12(a). However, if the party has timely waived service under Rule 4(d), a responsive pleading is timely if filed within 60 days after the request for a waiver was sent. See

1 id. A review of the docket in this case shows that the court ordered the United States Marshal to  
2 serve the complaint on defendants on July 19, 2012. No return of service has been filed with the  
3 court showing when or if any of the defendants have been served. As such, no default can be  
4 entered against the defendants for failure to defend.

5           Accordingly, IT IS HEREBY ORDERED that plaintiff's motion for default  
6 against the defendants (Doc. 13) is denied.

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8 DATED: October 19, 2012

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11 **CRAIG M. KELLISON**  
12 UNITED STATES MAGISTRATE JUDGE  
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