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

RICHARD V. ROOD,
Plaintiff,

No. 2:13-cv-0478-CMK-P

vs.

ORDER

GARY SWARTHOUT, et al.,
Defendant.

_____ /

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. 20).

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 id. A review of the docket in this case shows that service has not yet been authorized. Until the defendants have been served, no default can be entered against them.

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1 Accordingly, IT IS HEREBY ORDERED that plaintiff's motion for default
2 against the defendants (Doc. 20) is denied.

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4 DATED: September 30, 2016

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6 **CRAIG M. KELLISON**
7 UNITED STATES MAGISTRATE JUDGE
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