

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BRIAN RETTMAN,
Petitioner,
v.
RAYTHEL FISHER,
Respondent.

No. 2:16-cv-0885 JAM KJN P

ORDER

Petitioner is a state prisoner, proceeding without counsel. Petitioner filed a motion for default judgment pursuant to Rule 55(a) of the Federal Rules of Civil Procedure. Petitioner objects that respondent sought an extension of time in which to file a reply to petitioner’s opposition to respondent’s motion to dismiss. Petitioner argues that respondent is in “default” purportedly based on respondent’s failure to timely file a reply to petitioner’s opposition.

Rule 55(a) provides:

(a) Entering a Default. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default.

Fed. R. Civ. P. 55(a).

On January 3, 2017, respondent filed a motion to dismiss in response to the instant petition. Therefore, respondent has not failed to plead or otherwise defend this action. Therefore,

1 IT IS HEREBY ORDERED that petitioner's motion for relief under Rule 55(a) of the Federal
2 Rules of Civil Procedure (ECF No. 17) is denied.

3 Dated: April 13, 2017

4 
5 _____
6 KENDALL J. NEWMAN
7 UNITED STATES MAGISTRATE JUDGE

8 /rett0885.def
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28