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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

FRANKIE WEISNER,
Petitioner,
v.
KATHLEEN ALLISON,
Respondent.

No. 2:23-cv-0216 TLN CKD P

FINDINGS AND RECOMMENDATIONS

On May 8, 2023, petitioner filed a motion for entry of default judgment. That motion was denied on June 21, 2023. The court explained to petitioner that respondent was not in default because on March 1, 2023, the court ordered that respondent file a response to petitioner’s petition for a writ of habeas corpus within 60 days, and respondent filed an answer on April 28, 2023. The court found petitioner’s motion for entry of default judgment frivolous, and petitioner was warned that if he continued to file frivolous motions, sanctions - which might include dismissal of this action - would issue.

Despite the court’s warning, petitioner filed a second motion for entry of default. Again, the motion is frivolous. The record reveals that respondent served a second copy of the answer on petitioner on May 9, 2023, after the court and respondent were notified on May 1, 2023, that petitioner’s address had changed. This was done as a courtesy to petitioner and is not a basis for

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1 holding respondent in default as petitioner argues. Service of the answer on petitioner's address
2 of record on April 28, 2023, was fully effective.

3 The court will not sanction petitioner as this point, but the court warns petitioner again
4 that if he continues to file frivolous motions sanctions may issue, and such sanctions might
5 include dismissal of this action.

6 Accordingly, IT IS HEREBY RECOMMENDED that petitioner's motion for default
7 judgment (ECF No. 30) be denied.

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

16 Dated: August 3, 2023



17 CAROLYN K. DELANEY
18 UNITED STATES MAGISTRATE JUDGE