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5 UNITED STATES DISTRICT COURT  
6 NORTHERN DISTRICT OF CALIFORNIA  
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8 BERNARD LEE HAMILTON,

No. C 10-3682 SI (pr)

9 Plaintiff,

**ORDER**

10 v.

11 COLLEEN SHOOPMAN; et al.,

12 Defendants.  
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14 The court ordered plaintiff, who is not proceeding as a pauper, to serve process on five  
15 defendants by October 14, 2011. As of today, no defendant has appeared in this action.

16 Plaintiff's motion to dismiss defendants Pinkston and Coleman is GRANTED. (Docket  
17 # 19.) Defendants Pinkston and Coleman are dismissed from this action.

18 Plaintiff's request for entry of default and for entry of default judgment against the  
19 remaining three defendants is DENIED. (Docket # 22.) Federal Rule of Civil Procedure 55(b)  
20 contemplates that a default judgment may be sought *after* default has been entered against a  
21 defendant. *See also New York Life Ins. Co. v. Brown*, 84 F.3d 137 (5th Cir. 1996) ("After  
22 defendant's default has been entered, plaintiff may apply for a judgment based on such default.  
23 This is a default judgment."); *Lee v. Brotherhood of Maintenance of Way Employees*, 139 F.R.D.  
24 376, 380 (D. Minn. 1991). Insofar as plaintiff sought default judgment, his motion was  
25 premature because default had not been entered against any defendant. Plaintiff's request for  
26 entry of default will be denied because plaintiff failed to demonstrate to the satisfaction of the  
27 court that defendants Shoopman, Van Blarcom and Harless properly had been served with  
28 process in this action. Plaintiff submitted proofs of service in which a Richard Phillips stated  
that he had "served summons on Tim Rossetti, Litigation coordinator, who is authorized to

1 accept summons on behalf of San Quentin prison staff." Docket # 20. Phillips did not identify  
2 the date on which the service was made, did not identify the method by which he had served the  
3 summons, and did not state whether he had served the amended complaint with the summons  
4 for each of the three defendants. Without sufficient information that defendants properly were  
5 served with process, default is not proper. The motion for entry of default and default judgment  
6 is DENIED.

7 No later than **August 10, 2012**, plaintiff must (a) file a proof of service showing that he  
8 has caused the summons and amended complaint to be served on each defendant or (b) show  
9 cause why this action should not be dismissed for failure to serve process within 120 days of the  
10 filing of the complaint. *See* Fed. R. Civ. P. 4(l)-(m). If he does neither, the action will be  
11 dismissed. If plaintiff files a proof of service showing that the remaining defendants have been  
12 served, he also may file a new request for entry of default.

13 IT IS SO ORDERED.

14 Dated: June 28, 2012

  
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SUSAN ILLSTON  
United States District Judge