

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
SOUTHERN DISTRICT OF CALIFORNIA

ESTER BURNETT,)	Civil No.08CV1324-L(PCL)
)	
Plaintiff,)	AMENDED ORDER DENYING
v.)	MOTION FOR DEFAULT
)	JUDGMENT [doc. #41]
DR. DUGAN, et al.,)	
)	
Defendants.)	
_____)	

Plaintiff Ester Burnett, appearing *pro se*, moves for default judgment against defendants Dugan and Hawthorne contending that default has been entered against them. (Motion at 2.)¹

Plaintiff is incorrect. Default has not been entered against these defendants. Neither defendant Dugan nor Kinji Hawthorne has been served² with the first amended complaint. Defendants Nasaria Barreras, Dev Khatri, M. Frazee and Victor Almager timely filed a motion to dismiss the first amended complaint [doc. #34]

¹ Plaintiff's motion does not contain page numbers. The Court refers to the page number provided by the e-filing system.

² The "Service of Process by the U.S. Marshal" form was returned unexecuted as to Kinji Hawthorne, *see* docket no. 15, and Dr. Dugan, *see* docket no. 16. Because Dr. Dugan and Kanji Hawthorne have not been served, default cannot be entered against them.

1 Based on the foregoing, plaintiff's motion for default judgment against defendants Dugan
2 and Kinji Hawthorne is without a legal or factual basis. Accordingly, plaintiff's motion for
3 default judgment is **DENIED**.

4 **IT IS SO ORDERED.**

5 DATED: July 29, 2009

6 
7 M. James Lorenz
8 United States District Court Judge

8 COPY TO:

9 HON. PETER C. LEWIS
10 UNITED STATES MAGISTRATE JUDGE

11 ALL PARTIES/COUNSEL

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28