

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
CIVIL MINUTES—GENERAL

Case No. **SACV 13-668-DOC (KK)**

Date: February 13, 2019

Title: ***James Barclay v. City of Santa Ana, et al.***

Present: The Honorable **KENLY KIYA KATO, UNITED STATES MAGISTRATE JUDGE**

**DEB TAYLOR**

Not Reported

Deputy Clerk

Court Reporter

Attorney(s) Present for Plaintiff(s):

Attorney(s) Present for Defendant(s):

None Present

None Present

**Proceedings: Order Granting in Part and Denying in Part Defendant City of Santa Ana’s “Request for Dismissal, or in the Alternative, Leave to File Answer” [Dkt. 112]**

On February 21, 2018, Plaintiff James Barclay (“Plaintiff”), proceeding pro se and in forma pauperis, constructively filed his Second Amended Complaint (“SAC”). ECF Docket No. (“Dkt.”) 70. On April 9, 2018, after screening the SAC, the Court ordered service by the United States Marshal Service (“USMS”) on defendants Michael Martell, the United States of America, and City of Santa Ana. Dkts. 76, 77.

On December 3, 2018, the Court received a Process Receipt and Return Form for defendant City of Santa Ana from the USMS certifying that service was executed on the City of Santa Ana on November 26, 2018. Dkt. 106. Therefore, a response to the SAC from defendant City of Santa Ana was due on or before December 17, 2018. See Fed. R. Civ. P. 12(a)(1).

On December 21, 2018, Defendant City of Santa Ana filed a “Response to Summons Served on City of Santa Ana.” Dkt. 108. Defendant City of Santa Ana argues it was not properly served. Id. at 3, Declaration of Sandra M. Schwarzmann, Ex. 1.

On December 21, 2018, the Court issued an Order to Show Cause finding Defendant City of Santa Ana had been properly served and ordering Plaintiff to file a request for entry of default or a request for voluntary dismissal of defendant City of Santa Ana on or before January 11, 2019. Dkt. 109.

On January 7, 2019, Plaintiff constructively filed<sup>1</sup> a request for entry of default. Dkt. 111.

On February 5, 2019, defendant City of Santa Ana filed a “Request for Dismissal, or in the Alternative, Leave to File Answer.” Dkt. 112. Defendant City of Santa Ana argues Plaintiff’s request for entry of default was untimely because it was not entered on the Court’s docket until January 14, 2019. Id. However, Defendant fails to account for the fact that Plaintiff is currently an inmate at FCI Terminal Island and therefore entitled to the benefit of the “mailbox rule.” See Roberts, 627 F.3d at 770 n.1. Hence, defendant City of Santa Ana’s request for dismissal is denied.

Regarding the request for leave to file an Answer, the Court finds there is no prejudice to Plaintiff in granting defendant City of Santa Ana’s request to file an Answer. Hence, Defendant City of Santa Ana shall file an Answer to the SAC **no later than February 20, 2019.**<sup>2</sup>

**IT IS SO ORDERED.**

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<sup>1</sup> Under the “mailbox rule,” when a pro se prisoner gives prison authorities a pleading to mail to court, the court deems the pleading constructively “filed” on the date it is signed. Roberts v. Marshall, 627 F.3d 768, 770 n.1 (9th Cir. 2010) (citation omitted).

<sup>2</sup> The Court will defer ruling on Plaintiff’s request for entry of default until February 21, 2019. Defendant City of Santa Ana is cautioned that if it fails to timely file an Answer, Plaintiff’s request for entry of default will be granted.