

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
EASTERN DISTRICT OF CALIFORNIA

BRUCE PATRICK HANEY,

1:04-cv-05935-AWI-SMS-PC

Plaintiff,

v.

ORDER DENYING PLAINTIFF’S
REQUEST FOR ENTRY OF DEFAULT
(Doc. 41.)

R. SALDANA, et al.,

Defendants.

_____/

Bruce Patrick Haney (“Plaintiff”) is a state prisoner proceeding pro se in this civil rights action filed pursuant to 42 U.S.C. § 1983. This action now proceeds with the Third Amended Complaint filed on February 26, 2007, on Plaintiff’s Eighth Amendment claims against defendants R. Saldano and A. L. Nelson (“Defendants”).¹ On March 23, 2009, Plaintiff filed a request for entry of default against Defendants. (Doc. 41.)

I. REQUEST FOR ENTRY OF DEFAULT

Plaintiff submits copies of the USM-285 forms returned by the United States Marshal, providing evidence that Defendants were served with process on February 11, 2009. (Doc. 41 at 4, 5.) Plaintiff requests entry of default against Defendants because Defendants failed to file an answer, or other response, to the complaint within twenty days of the date of service.

¹All other claims and defendants were dismissed from this action by the court on December 15, 2008. (Doc. 34.)

1 Entry of default is appropriate as to any party against whom a judgment for affirmative relief
2 is sought that has failed to plead or otherwise defend as provided by the Federal Rules of Civil
3 Procedure and where that fact is made to appear by affidavit or otherwise. See Fed. R. Civ. P. 55(a).
4 Rule 12 of the Federal Rules of Civil Procedure provides, “[A] defendant must serve an answer
5 within 20 days after being served with the summons and complaint; or if it has timely waived service
6 under Rule 4(d), within 60 days after the request for a waiver was sent.” Fed. R. Civ. P. 12(a)(1)(A).
7 Under Rule 4(d), a defendant may waive service of a summons by signing and returning a waiver
8 of service. Fed R. Civ. P. 4(d).

9 In this action, the United States Marshal sent Waiver of Service forms on behalf of Plaintiff
10 to Defendants on January 29, 2009. (See Docs. 39, 40.) Defendants signed the forms on February
11 11, 2009, and returned them to the Marshal. Id. The Marshal received the completed forms on
12 February 12, 2009 and filed them at the court on February 27, 2009. Id. Based on this evidence, the
13 court concludes that Defendants timely waived service under Rule 4(d), causing their answer(s) to
14 be due on March 29, 2009. Defendants timely filed an answer on March 29, 2009. (Doc. 46.)
15 Therefore, plaintiff is not entitled to entry of default against Defendants.

16 Based on the foregoing, IT IS HEREBY ORDERED that Plaintiff’s request for entry of
17 default against Defendants is DENIED.

18
19 IT IS SO ORDERED.

20 **Dated:** November 20, 2009

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE