(PC) Hendon v. Ba	aroya et al II	Doc. 80
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5	UNITED STATES DISTRICT COURT	
6	EASTERN DISTRICT OF CALIFORNIA	
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8	CARLOS HENDON,	) 1:05-cv-01247-AWI-GSA-PC
9	Plaintiff,	ORDER FOR DEFENDANT HOPPE TO FILE RESPONSE TO COMPLAINT WITHIN TWENTY DAYS (Doc. 18.)
10	VS.	
11	BAROYA, et al.,	
12	Defendants.	)
13		
14	Carlos Hendon ("Plaintiff") is a state prisoner proceeding pro se with this civil rights action	
15	pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on September 30,	
16	2005. (Doc. 1.) This action now proceeds on the Second Amended Complaint filed on June 26, 2008,	
17	against defendants Baroya, Nguyet, Pham, Hoppe, Griffin, and Reidman ("Defendants"), for subjecting	
18	Plaintiff to cruel and unusual punishment in violation of the Eighth Amendment. <sup>1</sup> (Doc. 18.) On	
19	September 19, 2009, defendants Baroya, Riedman, Nguyet, Griffin and Pham filed an Answer. (Doc.	
20	35.) Defendant Hoppe has not filed an answer to the complaint.	
21	Rule 12 of the Federal Rules of Civil Procedure provides that "[a] defendant must serve an	
22	answer within 21 days after being served with the summons and complaint; or if it has timely waived	
23	service under Rule 4(d), within 60 days after the request for a waiver was sent." Fed. R. Civ. P.	
24	12(a)(1)(A). If a motion is served under this rule and the court denies the motion, "the responsive	
25	pleading must be served within 14 days after notice of the court's action." Fed. R. Civ. P. 12(a)(4)(A).	
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27	<sup>1</sup> On December 13, 2010, defendant Hamilton was dismissed from this action based on Plaintiff's failure to provide sufficient information to effect service. (Doc. 67.)	
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Defendant Hoppe waived service in this action on November 29, 2010. (Doc. 60.) Pursuant to the Waiver, defendant Hoppe was required to file "an answer or motion under Rule 12 . . . within 60 days after 10/5/10." Id. On December 2, 2010, defendant Hoppe joined defendants' motion to declare Plaintiff a vexatious litigant, to require Plaintiff to pay security, and to issue a pre-filing order against Plaintiff. (Docs. 54, 63.) On July 8, 2011, the Court granted the motion in part and denied the motion in part. (Doc. 70.) The Court granted the motion to declare Plaintiff a vexatious litigant but denied the motion to require Plaintiff to pay security and the motion to issue a pre-filing order against Plaintiff. (Id.) More than fourteen days have passed, and Defendant Hoppe has not filed a responsive pleading. Therefore, at this juncture, Defendant Hoppe shall be required to file a responsive pleading.

IV. CONCLUSION

Pageod on the foregoing. IT IS HEPERY OPPERED that within twenty (20) days from the date.

Based on the foregoing, IT IS HEREBY ORDERED that within twenty (20) days from the date of service of this order, Defendant Hoppe shall file an answer or motion under Rule 12 in response to the Second Amended Complaint.

IT IS SO ORDERED.

Dated: July 26, 2011 /s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE

<sup>&</sup>lt;sup>2</sup>The motion was filed by defendants Baroya, Nguyet, Pham, Griffin, and Reidman on October 12, 2010. (Doc. 54.)