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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

EDWARD J. MULLINS,

Plaintiff,

vs.

R. WENCIKER,

Defendant.

CASE NO. 1:07-cv-00108 LJO DLB PC

ORDER GRANTING MOTION  
FOR ENTRY OF DEFAULT  
AND DENYING MOTION FOR  
ENTRY OF DEFAULT JUDGMENT

(Doc. 99)

ORDER STRIKING ANSWER

(Doc. 101)

Plaintiff Edward J. Mullins (“plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on July 18, 2006 in the United States District Court, Central District of California. (Doc. 1.) This case was transferred to the Eastern District on January 19, 2007. On September 3, 2008, defendant Wenciker filed an answer to Plaintiff’s amended complaint filed on July 24, 2006. (Doc. 62.) Plaintiff was subsequently granted leave to amend, and on November 13, 2008, Plaintiff filed a second amended complaint. (Doc. 79.) On April 23, 2009, the Court issued a Findings and Recommendations following the screening of Plaintiff’s second amended complaint. (Doc. 89.) On June 5, 2009, the District Judge issued an order adopting the Findings and Recommendations and ordered Defendant Wenciker to file a responsive pleading within twenty (20) days of service of the order. (Doc. 95.)

1 Defendant Wenciker failed to timely comply with the Court's order, and on July 24, 2009,  
2 Plaintiff moved for entry of default and default judgment. (Doc. 99.) Three days later, defendant  
3 Wenciker filed an answer. (Doc. 101.) Defendant has not sought leave to file beyond the deadline.

4 Rule 15(a)(3) of the Federal Rules of Civil Procedure provides that "[u]nless the court orders  
5 otherwise, any required response to an amended pleading must be made within the time remaining to  
6 respond to the original pleading or within 10 days after service of the amended pleading, whichever is  
7 later". Fed. R. Civ. P. 15(a)(3). Defendant Wenciker did not file a responsive pleading within twenty  
8 days of service of the Court's order. Accordingly, Plaintiff's request for entry of default is granted.  
9 Defendant's answer will be stricken from the record.

10 With regard to Plaintiff's request for judgment, Plaintiff is advised that he may not simply  
11 demand judgment in the amount of \$5,000,000.00. Plaintiff must submit evidence in support of the  
12 amount of damages claimed. Because Plaintiff has submitted no evidence in support of his demand, the  
13 court must deny Plaintiff's request for entry of default judgment in the amount of \$5,000,000.00, without  
14 prejudice.

15 Accordingly, based on the foregoing, it is HEREBY ORDERED that:

- 16 1. Plaintiff's request for entry of default against defendant WENCIKER, filed July 24,  
17 2009, is GRANTED;
- 18 2. The Clerk of the Court shall enter default against defendant WENCIKER;
- 19 3. Plaintiff's request for entry of default judgment in the amount of \$5,000,000.00 is  
20 DENIED, without prejudice; and
- 21 4. Defendant Wenciker's answer, filed July 27, 2009, is HEREBY ORDERED STRICKEN.

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23 IT IS SO ORDERED.

24 **Dated: August 2, 2009**

**/s/ Dennis L. Beck**  
UNITED STATES MAGISTRATE JUDGE

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