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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

EDWARD DEMERSON,  
Plaintiff,  
v.  
JEANNE S. WOODFORD, et al.,  
Defendants.

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Case No. 1:08-cv-00144-LJO-SKO (PC)  
ORDER DENYING PLAINTIFF’S MOTION  
FOR DEFAULT JUDGMENT AGAINST  
DEFENDANT GREGORY, WITH  
PREJUDICE  
(Doc. 183)

**I. Procedural History**

Plaintiff Edward Demerson (“Plaintiff”), a prisoner proceeding pro, filed this civil rights action pursuant to 42 U.S.C. § 1983 on January 29, 2008. This action is proceeding on Plaintiff’s second amended complaint<sup>1</sup> (“complaint”), filed on June 24, 2009, against Defendants Phillips, Campos, Amaro, Clausing, Bardonnex, Munoz, and Cartagena<sup>2</sup> for using excessive physical force against Plaintiff, and against Defendants Munoz, Cartagena, Gregory, and Hilliard<sup>3</sup> for acting with deliberate indifference toward Plaintiff’s medical needs, in violation of the Eighth Amendment of the United States Constitution. (Docs. 39, 59.) The events at issue occurred on January 25, 2006, at California Substance Abuse Treatment Facility and State Prison (“CSTAF”) in Corcoran, California.

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<sup>1</sup> Misidentified by Plaintiff as the third amended complaint.  
<sup>2</sup> Misidentified as Cartagina in the complaint.  
<sup>3</sup> Misidentified as Hillard in the complaint.

1 Default was entered against Defendant Gregory on November 2, 2011; Defendants Munoz,  
2 Cartagena, and Hilliard's motion for summary judgment was granted on July 17, 2013, and  
3 Plaintiff's remaining excessive force claim against Defendants Phillips, Campos, Amaro,  
4 Clausing, Bardonnex, Munoz, and Cartagena was set for trial by order filed on July 22, 2013.  
5 This action was subsequently dismissed, with prejudice, on November 26, 2013, based on  
6 Plaintiff's failure to comply with the scheduling order.

7 Plaintiff filed a late notice of appeal on January 29, 2014, and the appeal was dismissed for  
8 failure to prosecute on April 4, 2014. The appellate court's order of April 4, 2014, constituted  
9 mandate, and the Court now reaches Plaintiff's pending motion for entry of default judgment, filed  
10 on February 21, 2014. Fed. R. Civ. P. 55(b)(2).

## 11 **II. Discussion and Order**

12 Plaintiff seeks default judgment against Defendant Gregory in the amount of \$30,000.00.  
13 Fed. R. Civ. P. 55(b)(2). Notice to Defendant Gregory was not required given that he never made  
14 an appearance in this action, Fed. R. Civ. P. 55(b)(2); *In re Roxford Foods, Inc.*, 12 F.3d 875, 879  
15 (9th Cir. 1993), and Plaintiff's motion has been submitted upon the record, Local Rule 230(l).<sup>4</sup>

16 Plaintiff's claim against Defendant Gregory arises from an incident in which Plaintiff  
17 alleges Gregory acted with deliberate indifference to his serious medical needs, in violation of the  
18 Eighth Amendment. Plaintiff's factual allegations were summarized as follows in the order  
19 granting summary judgment, filed on July 17, 2013:

20 In his unverified complaint, Plaintiff alleges that on January 25, 2006, he was  
21 brought in from the yard last, shackled, and beaten by Defendants Phillips,  
22 Campos, Amaro, Clausing, Bardonnex, Munoz, and Cartagena. (Doc. 39, pp. 7, 9,  
23 10.) After Plaintiff was placed in a holding cage, he complained of chest pain to  
24 Defendant Munoz. (*Id.*, p. 10.) Defendant Hilliard, a psychiatric technician, was  
25 present to assess Plaintiff's injuries and complete medical report. (*Id.*) Plaintiff  
26 alleges that Defendant Hilliard disregarded his request to see a doctor for his chest  
27 pain and refused to write his complaint of chest pain in the report. (*Id.*) Plaintiff  
28 then complained again to Defendant Munoz about chest pain. (*Id.*, p. 11.)  
Defendant Munoz told Plaintiff there was nothing wrong with him, but Munoz said  
he would get a nurse. (*Id.*)

[Defendant] Gregory subsequently arrived and Plaintiff complained he was having  
chest pain. (*Id.*) Gregory told Plaintiff to stand up and he informed her he was  
unable to stand. (*Id.*) Defendant Munoz opened the holding cage to allow Gregory

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<sup>4</sup> In light of the denial of Plaintiff's motion, there exist no issues requiring a hearing. Fed. R. Civ. P. 55(b)(2).

1 to examine Plaintiff. (*Id.*) Gregory again told Plaintiff to stand up, but he said he  
2 could not and he reported that his chest pain was worsening. (*Id.*) Gregory said  
3 Plaintiff would not get any medical treatment unless he stood because she was not  
going to bend over. (*Id.*) Gregory refused to treat Plaintiff or complete a medical  
report, leaving Plaintiff to suffer.

4 Plaintiff was later taken to Defendant Cartagena's office, where his injuries were  
5 videotaped. Plaintiff reported his chest pain to Defendant Cartagena, "to no avail."  
(*Id.* at ln. 27.)

6 Plaintiff alleges that due to Defendants [Gregory,] Munoz, Hilliard, and  
7 Cartagena's inaction, he was left to suffer in pain without medical treatment. (*Id.*,  
8 p. 12.) Approximately thirteen hours later, Plaintiff was taken to the CTC  
(Correctional Treatment Center), where he was treated with nitroglycerin and other  
medication. Plaintiff remained at the CTC overnight before he returned to his cell  
with medication. (*Id.*)

9 (Doc. 173, Order, 3:13-4:9.)

10 The Eighth Amendment is violated only when a prison official acts with deliberate  
11 indifference to an inmate's serious medical needs. *Snow v. McDaniel*, 681 F.3d 978, 985 (9th Cir.  
12 2012) ), *overruled in part on other grounds*, *Peralta v. Dillard*, \_\_ F.3d \_\_, \_\_, No. 09-55907,  
13 2014 WL 878830, at \*3 (9th Cir. Mar. 6, 2014); *Wilhelm v. Rotman*, 680 F.3d 1113, 1122 (9th Cir.  
14 2012); *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006). Plaintiff "must show (1) a serious  
15 medical need by demonstrating that failure to treat [his] condition could result in further  
16 significant injury or the unnecessary and wanton infliction of pain," and (2) that "the defendant's  
17 response to the need was deliberately indifferent." *Wilhelm*, 680 F.3d at 1122 (citing *Jett*, 439  
18 F.3d 1091, 1096 (9th Cir. 2006)). Deliberate indifference is shown by "(a) a purposeful act or  
19 failure to respond to a prisoner's pain or possible medical need, and (b) harm caused by the  
20 indifference." *Wilhelm*, 680 F.3d at 1122 (citing *Jett*, 439 F.3d at 1096). The requisite state of  
21 mind is one of subjective recklessness, which entails more than ordinary lack of due care. *Snow*,  
22 681 F.3d at 985 (citation and quotation marks omitted); *Wilhelm*, 680 F.3d at 1122.

23 In this case, Defendant Gregory's involvement in the alleged violation of Plaintiff's rights  
24 occurred during an incident which also involved Defendants Hilliard, Munoz, and Cartagena.  
25 However, on July 17, 2013, the Court determined that Defendants Hilliard, Munoz, and Cartagena  
26 were entitled to judgment as a matter of law because they acted reasonably in response to  
27 Plaintiff's complaints of chest pain and Plaintiff suffered no harm. With respect to the element of  
28 harm, the following evidence was uncontroverted:

1 Defendants' medical expert, Dr. Adams, attested that after the on-call physician  
2 was notified, Plaintiff was treated for musculoskeletal chest wall pain, which  
3 included treatments for acute coronary syndrome and gastro-esophageal reflux  
4 disease. (Adams Dec., ¶7.) Plaintiff's chest pain was transient and no other similar  
5 complaints of pain were documented in his medical chart after the episode on  
6 January 25 and 26, 2006. (*Id.*, ¶9.) Dr. Adams attested that in his medical opinion,  
7 Plaintiff suffered no injury or harm from the episode and Plaintiff's overall clinical  
8 condition did not appear consistent with any serious condition. (*Id.*, ¶¶10, 11.)

9 (Doc. 73, 7:6-12.)

10 The Court has discretion to enter or deny default judgment, *Eitel v. McCool*, 782 F.2d  
11 1470, 1471 (9th Cir. 1986); *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980), and given the  
12 determinations that other medical personnel involved acted reasonably and that Plaintiff suffered  
13 no harm as a result of the incident, Plaintiff is not entitled to default judgment against Defendant  
14 Gregory. Although Defendant Gregory has never appeared, it would nevertheless be incongruent  
15 and unfair for Plaintiff to obtain an award of damages against Defendant Gregory arising out of an  
16 incident in which the other similarly situated defendants were entitled to judgment as matter of  
17 law because they acted reasonably and Plaintiff suffered no harm. *Neilson v. Change (In re First*  
18 *T.D. & Inv., Inc.)*, 253 F.3d 520, 532 (9th Cir. 2001) (citing *Gulf Coast Fans, Inc. v. Midwest*  
19 *Electronics Importers, Inc.*, 740 F.2d 1499, 1512 (11th Cir. 1984)); *accord Garamendi v. Henin*,  
20 683 F.3d 1069, 1082-83 (9th Cir. 2012).

21 Accordingly, Plaintiff's motion for default judgment against Defendant Gregory, filed on  
22 February 21, 2014, is HEREBY DENIED, with prejudice.  
23 IT IS SO ORDERED.

24 Dated: April 7, 2014

25 /s/ Lawrence J. O'Neill  
26 UNITED STATES DISTRICT JUDGE