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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ROBERT MORRIS and MICHELLE MORRIS,)	1:08-cv-01422 OWW GSA
)	
)	ORDER ON PLAINTIFFS' REQUEST FOR
)	DEFAULT JUDGMENT
Plaintiffs,)	
)	(Doc. 43)
v.)	
)	
FRESNO POLICE DEPARTMENT,)	
OFFICERS CHRISTOPHER LONG,)	
JEREMY DeMOSS,)	
)	
Defendants.)	

On September 3, 2009, Plaintiffs filed a Request for Judgment by Default. (Doc. 43.)
For the reasons given below, Plaintiffs' request is DENIED.

BACKGROUND

On September 23, 2008, Plaintiffs initiated this action by filing a complaint with this Court. (Doc. 1.) On July 28, 2009, Plaintiffs filed a Third Amended Complaint (Doc. 37) and summonses were issued on August 5, 2009. (Doc. 40.)

On August 11 and 12, 2009, all Defendants were served. (Docs. 44-45.) Thereafter, on September 1, 2009, Defendants filed a Motion to Dismiss and set the matter for hearing before the Honorable Oliver W. Wanger on November 16, 2009, at 10:00 a.m. in Courtroom 3. (Doc. 42.) Subsequently, Plaintiffs filed the instant request for default judgment.

1 **DISCUSSION**

2 Plaintiffs complain that because Defendants have failed to file an “answer” to their
3 Complaint, they are entitled to judgment as a matter of law, and thus request default be entered as
4 against all Defendants. Plaintiffs are mistaken.

5 Rule 12(b)(6) of the Federal Rules of Civil Procedure permits Defendants to file a motion
6 to dismiss as its responsive pleading:

7 (b) How to Present Defenses. Every defense to a claim for relief in any pleading
8 must be asserted in the responsive pleading if one is required. But a party may
9 assert the following defenses by motion: . . . (6) failure to state a claim upon
which relief may be granted . . .

10 In other words, Defendants are not limited to filing an answer to Plaintiffs’ complaint.
11 Defendants may in fact properly move to dismiss the complaint - in this instance, the Third
12 Amended Complaint - rather than file an answer.

13 Additionally, Rule 12(b)(e) of the Federal Rules of Civil Procedure permits Defendants to
14 file a motion for a more definite statement regarding the complaint, in place or instead of filing
15 an answer to the complaint:

16 (e) Motion for a More Definite Statement. A party may move for a more definite
17 statement of a pleading to which a responsive pleading is allowed but which is so
18 vague or ambiguous that the party cannot reasonably prepare a response. The
motion must be made before filing a responsive pleading and must point out the
defects complained of and the details desired. . . .

19 A responsive pleading was due twenty (20) days after service upon the Defendants was
20 effected. Defendant DeMoss was served on August 11, 2009 (Doc. 46); Defendants Long and
21 the Fresno Police Department were served on August 12, 2009 (Docs. 44-45). Thus, responsive
22 pleadings were due on August 31, 2009, and September 1, 2009, respectively. All Defendants
23 filed a motion to dismiss the complaint on September 1, 2009. (Doc. 42.) Thus, Defendants
24 Long and the Fresno Police Department timely filed a responsive pleading. Therefore, there is no
25 basis upon which to enter default against those Defendants.

26 If Plaintiffs wish to assert they are entitled to default against Defendant DeMoss because
27 his responsive pleading was due on August 31, 2009, Plaintiffs must make a renewed request as
28 to Defendant DeMoss alone. Plaintiffs are cautioned to familiarize themselves with the Federal

1 Rules of Civil Procedure and this Court's Local Rules. More particularly, Plaintiffs should refer
2 to Rule 55 of the Federal Rules of Civil Procedure regarding default judgments.

3 In conclusion, Plaintiffs' Request to Enter Judgment of Default (Doc. 43), filed
4 September 2, 2009, is **DENIED**.

5
6
7 IT IS SO ORDERED.

8 **Dated: September 8, 2009**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE