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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

LAMONT SHEPARD,

Plaintiff,

v.

T. QUILLEN,

Defendant.

CASE NO. 1:09-cv-00809-DLB PC

ORDER DENYING REQUEST FOR ENTRY OF DEFAULT

(Doc. 11)

_____ /

Plaintiff Lamont Shepard (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding against Defendant T. Quillen for violation of the Eighth Amendment.

On January 29, 2010, Plaintiff filed a motion for default against Defendant Quillen for failure to reply. Plaintiff contends that the Court, by order filed November 2, 2009, directed the United States Marshal to serve Defendant Quillen within ten days, and Defendant did not file a reply within twenty days afterwards. Plaintiff thus contends that judgment should be entered against Defendant.

Plaintiff ignores several parts of the Court’s November 2, 2009 order. Defendant has sixty days after being served with the summons and complaint to return a waiver of service. (Doc. 9, Order 1:26-2:8.) Even assuming the United States Marshal notified Defendant Quillen by November 12, 2009 of the commencement of this action, that would still give Defendant until

1 March 5, 2010, to return a waiver of service. For entry of default to occur, a party must fail to
2 plead or otherwise defend. Fed. R. Civ. P. 55. Before this can occur, a party must first make an
3 appearance before this Court.

4 Accordingly, the Court HEREBY ORDERS that Plaintiff's motion for entry of default,
5 filed January 29, 2010, is DENIED.

6 IT IS SO ORDERED.

7 **Dated: February 2, 2010**

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE

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