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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KEVIN E. FIELDS,

Plaintiff,

v.

T. LLOREN, et al.,

Defendants.

CASE NO. 1:09-cv-1733-AWI-MJS (PC)

ORDER DENYING PLAINTIFF'S REQUEST
FOR ENTRY OF DEFAULT

(ECF No. 23)

_____ /

Plaintiff Kevin E. Fields ("Plaintiff") is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983.

Plaintiff initiated this action on October 2, 2009. (ECF No. 1.) The Court screened Plaintiff's Complaint on December 10, 2010, and dismissed it with leave to amend for failure to state a claim. (ECF No. 9.) Plaintiff filed a First Amended Complaint on December 17, 2010. (ECF No. 10.) The Court found that Plaintiff's First Amended Complaint stated a cognizable claim against Defendants Lloren and Battles and ordered service on these Defendants. (ECF No. 18, 19, 21.) Defendants' waivers of service were returned on February 27, 2012, and Defendants were to file responsive pleadings by March 30, 2012. (ECF No. 22.) Defendants did not file any pleading until their Answer was filed April 20, 2012. (ECF No. 24.)

On April 6, 2012, prior to Defendants filing their answer, Plaintiff filed a motion for

1 an entry of default. (ECF No. 23.) Plaintiff argued that he is entitled to a default judgment
2 because Defendants were served on February 27, 2012 and failed to file a timely
3 response. (Id.)

4 Plaintiff is correct that Defendants did not meet the applicable filing deadline.
5 However, Defendants' Answer to the First Amended Complaint was only twenty-one days
6 late, and it does not appear Plaintiff suffered any prejudice from that delay. The Court
7 prefers that actions be addressed on the merits and not be disposed of against a party
8 because of that party's inconsequential failure to meet a time limit. Moreover, Defendants'
9 answer makes it clear Defendants intend to defend against this action on the merits.
10 Thus, even if the Court were to enter default, it likely would be set aside. See Knox v.
11 Woodford, 2010 WL 19567839, *1 (E.D. Cal. May 14, 2010). Thus, default is inappropriate.

12 Accordingly, Plaintiff's motion for an entry of default (ECF No. 23) is DENIED.

13
14 IT IS SO ORDERED.

15 Dated: June 13, 2012

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE