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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BRYAN E. RANSOM,
Plaintiff,

v.

DEPARTMENT OF CORRECTIONS AND
REHABILITATION, et al.,
Defendants.

Case No. 1: 11-cv-0068-AWI-MJS (PC)

**ORDER DENYING PLAINTIFF'S
MOTION FOR DEFAULT JUDGMENT
AGAINST DEFENDANT PUNT**

(ECF No. 63)

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action brought pursuant to 28 U.S.C. § 1983. The action proceeds against Defendants Greaves, Bondoc, Punt, Madina, Swingle, Neubarth, Corea and Dhah on Plaintiff's Eighth Amendment medical indifference claims. (ECF Nos. 21 & 26.) On April 29, 2015, default was entered against Defendant Punt. (ECF No. 53.) Plaintiff now moves for entry of default judgment against this Defendant. (ECF No. 63.)

Federal Rule of Civil Procedure 55(b)(1) provides that, where the plaintiff seeks "a sum certain or a sum that can be made certain by computation" and provides an affidavit showing the amount due, the clerk must enter judgment for that amount and

1 costs against a defendant who has been defaulted. However, “[i]n all other cases, the
2 party must apply to the court for a default judgment.” Fed. R. Civ. P. 55(b)(2). The entry
3 of default against a defendant does not necessarily entitle a plaintiff to a default
4 judgment. Aldabe v. Aldabe, 616 F.2d 1089, 1092 (9th Cir. 1980).

5 “[A] claim is not a sum certain unless no doubt remains as to the amount to which
6 a plaintiff is entitled as a result of the defendant's default.” Franchise Holding II, LLC v.
7 Huntington Rests. Group, Inc., 375 F.3d 922, 928-29 (9th Cir. 2004) (following the First
8 Circuit's definition of “sum certain” as set out in KPS & Assocs., Inc. v. Designs by FMC,
9 Inc., 318 F.3d 1, 17-21 (1st Cir. 2003)).

10 In the Court's order entering default against Defendant Punt, Plaintiff was
11 informed that he must prove the specific amount of damages to which he is entitled
12 under the sworn allegations in the First Amended Complaint (“FAC”). Fed. R. Civ. P.
13 55(b)(2). He was also informed that he should submit a sworn declaration, along with
14 any other supporting documentation, outlining his damages with sufficient particularity to
15 allow the Court to determine from it and the FAC whether default judgment is
16 appropriate and, if so, in what amount. In support of his motion, Plaintiff submits his
17 declaration and multiple exhibits generally detailing the progressive nature of Hep-C.
18 Examination of this declaration, the exhibits, and Plaintiff's FAC convinces the Court
19 that Plaintiff's motion for default judgment as to this Defendant should be denied

20 As an initial matter, the Court finds that the sum sought is not certain. Plaintiff
21 complains in the FAC that during 2004-2010, while incarcerated by the California
22 Department of Corrections and Rehabilitation at California State Prison – Corcoran and
23 High Desert State Prison, his Hepatitis-C (“Hep-C”) condition was not properly
24 diagnosed, treated and accommodated. During this six-year span, Plaintiff met with
25 several medical professionals who allegedly failed to treat Plaintiff's Hep-C. As to Dr.
26 Punt, Plaintiff met with him once on March 3, 2008. At this meeting, Dr. Punt reviewed
27 Plaintiff's Health Care Service Request, in which Plaintiff detailed the nature of his Hep-
28 C, but Dr. Punt did not start Plaintiff on needed treatment. FAC ¶ 34.

1 Plaintiff claims that Dr. Punt's failure to treat him contributed to the progressive
2 damage to Plaintiff's health. As Plaintiff concedes, though, "[i]t is extremely difficult to
3 determine the monetary value of the physical damage to [his] liver and health caused by
4 Defendant K. Punt's failure to provide [him] Hepatitis C treatment." Pl.'s Decl. ¶ 10.
5 Nonetheless, Plaintiff asks for \$250,000.00 in compensatory and punitive damages as
6 an adequate award. The amount of compensation due for Defendant Punt's role in
7 Plaintiff's injury, if any, and the amount of punitive damages appropriate for the alleged
8 misconduct are subject to considerable doubt, and thus the damages sought herein are
9 not of a "sum certain" under Rule 55(b)(1). Accordingly, the Court has discretion as to
10 whether to enter a default judgment against defendant.

11 A court may consider numerous factors in deciding whether to exercise its
12 discretion to enter a default:

13 Factors which may be considered by courts in exercising
14 discretion as to the entry of default judgment include (1) the
15 possibility of prejudice to the plaintiff, (2) the merits of
16 plaintiff's substantive claim, (3) the sufficiency of the
17 complaint, (4) the sum of money at stake in the action, (5)
18 the possibility of a dispute concerning material facts, (6)
19 whether the default was due to excusable neglect, and (7)
20 the strong policy underlying the Federal Rules of Civil
21 Procedure favoring decisions on the merits.

22 Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir.1986).

23 As a general rule, once default is entered, well-pleaded factual allegations in the
24 operative complaint are taken as true, except for those allegations relating to damages.
25 Tele Video Sys., Inc. v. Heidenthal, 826 F.2d 915, 917-18 (9th Cir. 1987) (per curiam)
26 (citing Geddes v. United Fin. Group, 559 F.2d 557, 560 (9th Cir. 1977) (per curiam));
27 see also Fair Housing of Marin v. Combs, 285 F.3d 899, 906 (9th Cir. 2002). Although
28 well-pleaded allegations in the complaint are admitted by a defendant's failure to
respond, "necessary facts not contained in the pleadings, and claims which are legally
insufficient, are not established by default." Cripps v. Life Ins. Co. of N. Am., 980 F.2d
1261, 1267 (9th Cir. 1992) (citing Danning v. Lavine, 572 F.2d 1386, 1388 (9th Cir.
1978)); accord DIRECTV, Inc. v. Huynh, 503 F.3d 847, 854 (9th Cir. 2007) ("[A]

1 defendant is not held to admit facts that are not well-pleaded or to admit conclusions of
2 law” (citation and quotation marks omitted); Abney v. Alameida, 334 F. Supp. 2d 1221,
3 1235 (S.D. Cal. 2004) (“[A] default judgment may not be entered on a legally insufficient
4 claim.”).

5 Examination of the FAC convinces the Court that, even taking Plaintiff’s
6 allegations as true, they are insufficient to establish deliberate indifference. “Deliberate
7 indifference is a high legal standard. A showing of medical malpractice or negligence is
8 insufficient to establish a constitutional deprivation under the Eighth Amendment.”
9 Toguchi v. Chung, 391 F. 3d 1051, 1060 (9th Cir. 2004); see Hallett v. Morgan, 296
10 F.3d 732, 744 (9th Cir. 2002); see also Wood v. Housewright, 900 F.2d 1332, 1334 (9th
11 Cir. 1990) (stating that even gross negligence is insufficient to establish a constitutional
12 violation); Broughton v. Cutter Labs., 622 F.2d 458, 460 (9th Cir. 1980) (per curiam)
13 (noting mere indifference, medical malpractice, or negligence do not support a cause of
14 action under the Eighth Amendment). As noted, the FAC alleges only that Defendant
15 Punt did not prescribe treatment for Plaintiff’s Hep-C after reviewing Plaintiff’s Health
16 Care Service Request. But these facts, without more, simply do not raise this
17 Defendant’s conduct to the requisite level of deliberate indifference. In light of the sum
18 of money at stake (\$250,000.00), the insufficiency of Plaintiff’s pleading, and the strong
19 policy favoring decisions on the merits, Plaintiff’s motion will be denied.

20 Based on the foregoing, it is HEREBY ORDERED that Plaintiff’s May 26, 2015
21 motion for default judgment (ECF No. 63) is DENIED.

22
23 IT IS SO ORDERED.

24 Dated: January 15, 2016

25 /s/ Michael J. Seng
26 UNITED STATES MAGISTRATE JUDGE
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