

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KEITH DUANE ARLINE, JR.,) Case No.: 1:11-cv-00420-LJO-SAB (PC)
Plaintiff,)
v.)
KEN CLARK, et al.,) ORDER DENYING PLAINTIFF'S REQUEST
Defendants.) FOR ENTRY OF DEFAULT AS PREMATURE
) [ECF No. 40]
)
)
)

Plaintiff Keith Duane Arline, Jr. is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

This action is proceeding against Defendants D. Goss, T. Wan, and Kathleen Allison for deprivation of outdoor exercise in violation of the Eighth Amendment.

On March 3, 2015, Plaintiff filed a request for entry of default. (ECF No. 40.) Plaintiff contends that Defendants were served by the United States marshal on January 30, 2015, and have failed to file a response to the complaint. Plaintiff's request for entry of default must be denied.

Rule 12(a)(1)(A)(ii) of the Federal Rules of Civil Procedure provides that a defendant that has timely waived service under Rule 4(d) must respond “within 60 days after the request for a waiver was sent, or within 90 days after it was sent to the defendant outside any judicial district of the United States.” Fed. R. Civ. P. 12(a)(1)(A)(ii).

1 Rule 55(a) of the Federal Rules of Civil Procedure requires the Clerk of the Court to enter
2 default "when a party against whom a judgment for affirmative relief is sought has failed to plead or
3 otherwise defend, and that failure is shown by affidavit or otherwise." Fed. R. Civ. P. 55(a).

4 In this instance, the requests by the United States marshal for Defendants to waive service were
5 sent on January 8, 2015, and filed with the Court on February 4, 2015. (ECF No. 39.) Therefore,
6 pursuant to their waivers of service, Defendants are not required to answer the complaint until sixty
7 days thereafter, i.e. March 9, 2015. Accordingly, Plaintiff's request for entry of default is DENIED as
8 premature.

9
10 IT IS SO ORDERED.

11 Dated: March 4, 2015



UNITED STATES MAGISTRATE JUDGE