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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

ABEL VALENCIA,)	Case No.: 1:12-cv-01446-AWI-SAB (PC)
)	
Plaintiff,)	
)	ORDER DENYING PLAINTIFF’S MOTION
v.)	FOR ENTRY OF DEFAULT
)	
CONNIE GIPSON, et al.,)	[ECF No. 39]
)	
Defendants.)	
)	
)	

Plaintiff Abel Valencia is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

On May 20, 2014, the Court directed the United States Marshal to serve the complaint on Defendants J.C. Garcia, S. Johnson, A. Mayo, D.J. Ruiz, and J.C. Smith.¹

On June 20, 2014, Defendants S. Johnson and J.C. Smith waived service of the summons in this action. (ECF No. 28.)

On July 22, 2014, Defendants J.C. Garcia, D.J. Ruiz, and A. Mayo waived service of the summons in this action. (ECF No. 32.)

¹ Although the Court found that Plaintiff stated a cognizable due process claim against an unknown IGI officer, the Court advised Plaintiff that it cannot order service by the United States Marshal on a doe defendant. If an when the identity is ascertained by Plaintiff, he must file a motion to amend the complaint and identify the Doe defendant so service may be effectuated by the United States Marshal. (ECF No. 23.)

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On August 26, 2014, Defendant filed a request to extend the time by twenty-days to file a responsive pleading, which was granted by the Court on August 28, 2014. (ECF Nos. 33, 34.)

On September 15, 2014, Defendants filed an answer to the complaint. On September 16, 2014, Defendants filed an amended answer to the complaint, omitting the erroneous reference to “Defendant Diaz” in the original answer.

Rule 55(a) of the Federal Rules of Civil Procedure requires that the clerk of the Court enter default “[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise.” Fed. R. Civ. P. 55(a).

Because Defendants have filed a timely answer to the complaint, Plaintiff request for entry of default must be DENIED.

IT IS SO ORDERED.

Dated: September 29, 2014


UNITED STATES MAGISTRATE JUDGE