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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ARCHIE CRANFORD,
Plaintiff,
vs.
RENEE MEDINA, et al.,
Defendants.

1:13-cv-00210-GSA-PC
ORDER DENYING PLAINTIFF'S
MOTION FOR ENTRY OF DEFAULT AND
DEFAULT JUDGMENT
(Doc. 23.)

I. BACKGROUND

Archie Cranford ("Plaintiff") is a civil detainee proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on February 8, 2013. (Doc. 1.)

On February 21, 2013, Plaintiff consented to Magistrate Judge jurisdiction in this action pursuant to 28 U.S.C. § 636(c), and no other parties have made an appearance. (Doc. 5.) Therefore, pursuant to Appendix A(k)(4) of the Local Rules of the Eastern District of California, the undersigned shall conduct any and all proceedings in the case until such time as reassignment to a District Judge is required. Local Rule Appendix A(k)(3).

On September 20, 2013, Plaintiff filed a motion for entry of default and default judgment against the defendants to this action. (Doc. 23.)

1 **II. ENTRY OF DEFAULT AND DEFAULT JUDGMENT**

2 Entry of default is appropriate as to any party against whom a judgment for affirmative
3 relief is sought that has failed to plead or otherwise defend as provided by the Federal Rules of
4 Civil Procedure and where that failure is shown by affidavit or otherwise. See Fed. R. Civ. P.
5 55(a). Rule 12 of the Federal Rules of Civil Procedure provides, “[A] defendant must serve an
6 answer within 21 days after being served with the summons and complaint; or if it has timely
7 waived service under Rule 4(d), within 60 days after the request for a waiver was sent.” Fed.
8 R. Civ. P. 12(a)(1)(A). Under Rule 4(d), a defendant may waive service of a summons by
9 signing and returning a waiver of service. Fed. R. Civ. P. 4(d). If a defendant fails to plead or
10 otherwise defend an action after being properly served with a summons and complaint, a
11 default judgment may be entered pursuant to Rule 55(a) of the Federal Rules of Civil
12 Procedure.

13 Plaintiff requests entry of default and default judgment against the defendants to this
14 action, for failure to plead or otherwise defend as provided by the Federal Rules of Civil
15 Procedure. Plaintiff asserts that the defendants have each been served with a copy of the
16 Third Amended Complaint, “as appears from the proof of service on file.” (Motion at 2:8-9.)

17 **Discussion**

18 Court records do not reflect Plaintiff’s assertion that the defendants have been served
19 with copies of the Third Amended Complaint. To date, the court has not received notice that
20 any of the defendants have been served with process or waived service. (Court Record.) Under
21 Rule 12, defendants are not required to respond to the complaint until after they have been
22 served or waived service. Thus, at this stage of the proceedings, defendants in this action are
23 not yet required to respond to the complaint. Plaintiff has not shown that defendants were
24 properly served with process and failed to plead or otherwise defend pursuant to Rule 55(a).
25 Therefore, Plaintiff’s motion for entry of default and default judgment must be denied.

26 Presently, the Third Amended Complaint, filed on June 11, 2014, awaits the court’s
27 requisite screening under 28 U.S.C. § 1915A. (Doc. 22.) The court will not direct the United
28 States Marshal (“Marshal”) to serve process in this action until after the court has screened the

1 complaint under 28 U.S.C. § 1915A and found that Plaintiff states cognizable claims against
2 defendants. Plaintiff will receive notice from the court when it is time for service.

3 **III. CONCLUSION**

4 Based on the foregoing, IT IS HEREBY ORDERED that Plaintiff's motion for entry of
5 default and default judgment against the defendants, filed on June 25, 2014, is DENIED.

6
7 IT IS SO ORDERED.

8 Dated: June 27, 2014

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE