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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DANIEL G. VALENCIA,
Plaintiff,
v.
WINFRED KOKOR,
Defendant.

Case No. 1:13-cv-01391 DLB PC
ORDER DENYING PLAINTIFF'S
MOTION FOR ENTRY OF DEFAULT
(Document 25)

Plaintiff Daniel G. Valencia ("Plaintiff") is a California state prisoner proceeding pro se in this civil action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on August 30, 2013.¹

On August 8, 2014, the Court found that Plaintiff stated a cognizable Eighth Amendment claim against Defendant Kokor and ordered Plaintiff to return service documents.

On August 22, 2014, after Plaintiff returned the documents, the Court ordered the United States Marshal to serve Defendant.

On October 22, 2014, Plaintiff filed a motion for entry of default. Although the service documents have not been filed with the Court, Plaintiff attaches the USM-285 form showing that the United States Marshal mailed service documents to Defendant on August 29, 2014. Plaintiff also attaches a September 17, 2014, letter from the Attorney General's Office indicating that they represent Defendant Kokor.

¹ Plaintiff consented to the jurisdiction of the United States Magistrate Judge on September 12, 2013.

1 “Proof” of mailing, however, is not proof of service. It appears only that a waiver was
2 mailed on August 29, 2014, and a defendant who elects to waive service has sixty days from the date
3 set forth in the waiver to file that response. Fed. R. Civ. P. 4(d).

4 More importantly, Defendant Kokor filed a motion to dismiss this action on October 28,
5 2014, and he has therefore made an appearance.

6 Accordingly, Plaintiff’s motion for entry of default is HEREBY DENIED. Fed. R. Civ. P.
7 55(a).

8
9 IT IS SO ORDERED.

10 Dated: October 29, 2014

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE