

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TOMMIE LEE BAKER,
Plaintiff
v.
J. ALVA, et al.,
Defendant

CASE NO. 1:14-cv-1020-AWI-MJS (PC)

**ORDER DENYING REQUEST FOR
ENTRY OF DEFAULT**

(ECF NO. 23)

I. PROCEDURAL HISTORY

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action brought pursuant to 42 U.S.C. § 1983. (ECF Nos. 4 & 9.) The action proceeds on Plaintiff's Eighth Amendment failure to protect claim against Defendants Alva, Mendoza, Franco, and O'Daniels. (ECF Nos. 11 & 13.)

On November 20, 2014, the Court ordered service upon Defendants by the U.S. Marshals Service. (ECF No. 17.) On December 19, 2014, the Court received waivers of service of summons from all four Defendants; the requests for waiver were sent on December 16, 2014. (ECF No. 13.) Defendants answers were due February 17, 2015. (Id.) Defendants filed their answer on January 16, 2015. (ECF No. 19.)

Before this Court is Plaintiff's request to enter default against Defendants based on their failure to timely answer or otherwise respond to his complaint. (ECF No. 23.)

II. **LEGAL STANDARD**

In general, “[a] summons must be served with a copy of the complaint.” Fed. R. Civ. P. 4(c)(1). However, many defendants have “a duty to avoid unnecessary expenses

1 of serving the summons." Fed. R. Civ. P. 4(d)(1). "The plaintiff may notify such a
2 defendant that an action has been commenced and request that the defendant waive
3 service of a summons." Id. Rule 12(a)(1)(A)(ii) of the Federal Rules of Civil Procedure
4 provides that a defendant that has timely waived service under Rule 4(d) must respond
5 "within 60 days after the request for a waiver was sent, or within 90 days after it was sent
6 to the defendant outside any judicial district of the United States."

7 Rule 55(a) of the Federal Rules of Civil Procedure requires that the Clerk of the
8 Court enter default "when a party against whom a judgment for affirmative relief is
9 sought has failed to plead or otherwise defend, and that failure is shown by affidavit or
10 otherwise." Rule 55(b)(2) provides that the Court may grant a default judgment after
11 default has been entered by the Clerk of the Court.

12 **III. ANALYSIS**

13 Plaintiff is not entitled to entry of default because Defendants timely filed an
14 answer to the complaint. (ECF No.19.) Pursuant to Rule 12, Defendants had sixty days
15 after the request for waiver was sent to file their responsive pleading. The request for
16 waiver was sent on December 16, 2014 (ECF No. 18). Defendants' answer was due on
17 February 17, 2015. Defendants filed their answer on January 16, 2015. (ECF No. 19.)
18 The answer was timely.

19 **IV. ORDER**

20 Accordingly, Plaintiff's request for entry of default is HEREBY DENIED.

21 IT IS SO ORDERED.

22 Dated: February 4, 2015

23 /s/ Michael J. Seng
24 UNITED STATES MAGISTRATE JUDGE

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