

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LACEDRIC JOHNSON, Plaintiff, v. SCOTT FRAUENHEIM, et al., Defendants.	Case No. 1:14-cv-01601-LJO-SKO (PC) ORDER DENYING MOTION FOR SANCTIONS (Doc. 16)
---	---

Plaintiff Lacedric Johnson, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on October 14, 2014. This action is proceeding on Plaintiff's amended complaint against (1) Defendants Santos and Salas for violation of the First Amendment's Free Exercise Clause; (2) Defendant Santos for violation of the Fourth Amendment; (3) Defendants Santos, Leon, Espinosa, Benavides, Bejinez, Erickson, Hill, Kennedy, Lopez, Luna, Ramirez, Salas, Trinidad, Deshazo, and Newton for violation of the Eighth Amendment arising out of the use of excessive physical force; and (4) Defendant Bejinez, Trinidad, Deshazo, George, Hansen, Liebold, Sharp, and Hoggard for violation of the Eighth Amendment arising out of the denial of adequate medical care. On July 27, 2015, the Court issued an order directed the United States Marshal to initiate service of process, and on October 5, 2015, Plaintiff filed a motion seeking sanctions against Defendants for failing to waive service or respond to his amended complaint.

1 If a party fails “to plead or otherwise defend, and that failure is shown by affidavit of
2 otherwise,” entry of default is appropriate. Fed. R. Civ. P. 55(a). In this case, nineteen defendants
3 returned waivers of service of the summons and amended complaint, and all twenty defendants
4 filed an answer on October 6, 2015.¹ For the nineteen defendants who filed waivers, their
5 responses were not due until October 9, 2015, and October 16, 2015, respectively, and their
6 answer was timely filed. With respect to Defendant Santos, there is no waiver of service in the
7 file, but the waivers were issued by the United States Marshal at the same time, on August 7,
8 2015, and a response would not have been due before October 9, 2015.² Moreover, Santos made
9 an appearance with the other defendants on October 6, 2015, which precludes entry of default.
10 Fed. R. Civ. P. 55; *Franchise Holding II, LLC v. Huntington Rests. Grp., Inc.*, 375 F.3d 922, 927-
11 28 (9th Cir. 2004) (if party appeared, clerk’s entry of default void *ab initio*).

12 Defendants did not fail to timely response to Plaintiff’s amended complaint, and therefore,
13 Plaintiff’s motion for sanctions is DENIED.

14
15 IT IS SO ORDERED.

16 Dated: October 9, 2015

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE

17
18
19
20
21
22
23
24
25
26 _____
27 ¹ Upon waiving service, the defendants were entitled to sixty days plus three days for mailing. Fed. R. Civ. P. 6(d).
28 For eighteen of the defendants, a response was due on or before October 9, 2015. For the nineteenth defendant, M.
Ramirez, a response was due on or before October 16, 2015. (Docs. 14, 15.)

² Nor was Defendant Santos personally served.