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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RONALD YOUNG,
Plaintiff,
v.
C. SISODIA,
Defendant.

Case No. 1:15-cv-00640-LJO-EPG (PC)
ORDER DENYING PLAINTIFF’S MOTION
FOR RECONSIDERATION BY DISTRICT
JUDGE
(ECF NO. 37)

Ronald Young (“Plaintiff”) is proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. The case is now proceeding on Plaintiff’s Second Amended Complaint against defendant C. Sisodia. (ECF Nos. 19, 20, & 23).

On May 22, 2017, Plaintiff filed a motion for entry of default (ECF No. 33) and a motion for default judgment (ECF No. 34). On May 31, 2017, Magistrate Judge Erica P. Grosjean issued an order denying both motions. (ECF No. 35). On June 16, 2017, Plaintiff filed what the Court construes as a motion for reconsideration by the assigned district judge (“the Motion”). (ECF No. 37).

District courts review a motion to reconsider a magistrate judge’s ruling under the “clearly erroneous or contrary to law” standard set forth in 28 U.S.C. § 636(b)(1)(A) and Fed. R. Civ. P.

1 72(a). As such, this Court may only set aside those portions of a magistrate judge's order that are
2 either clearly erroneous or contrary to law. Fed. R. Civ. P. 72(a).

3 The Motion will be denied. Plaintiff argues that Judge Grosjean did not have authority to
4 enter the order denying the motion for entry of default or the motion for default judgment.
5 However, Plaintiff is mistaken. Judge Grosjean does have authority to deny Plaintiff's motion for
6 default judgment and to refuse to order the clerk to enter default. Fed. R. Civ. P. 55; Local Rule
7 302(c)(19).

8 Plaintiff also argues that Judge Grosjean's order contained plain error, because defendant
9 Sisodia did in fact default. However, once again, Plaintiff is incorrect. As Judge Grosjean
10 pointed out, "[t]he United States Marshal Service filed the executed waiver of service on May 4,
11 2017. (ECF No. 31). According to the wavier, defendant Sisodia had 60 days from after March
12 29, 2017, in which to serve his answer. (Id.). Defendant Sisodia filed and served his answer on
13 May 23, 2017, which is within this time period. (ECF No. 32). Therefore, defendant Sisodia did
14 not default and Plaintiff is not entitled to an entry of default or a default judgment." (ECF No.
15 25).

16 In arguing that defendant Sisodia only had twenty days after he was served to file his
17 answer, Plaintiff ignores Federal Rule of Civil Procedure 4(d)(3), which states: "A defendant
18 who, before being served with process, timely returns a waiver need not serve an answer to the
19 complaint until 60 days after the request was sent--or until 90 days after it was sent to the
20 defendant outside any judicial district of the United States." In this case, defendant Sisodia
21 executed a waiver of service. (ECF No. 31). Defendant Sisodia had 60 days from after March
22 29, 2017,¹ in which to file his answer (ECF No. 31), and he filed his answer within this period
23 (ECF No. 32). Therefore defendant Sisodia did not default and Plaintiff is not entitled to an entry
24 of default or default judgment.

25
26 ¹ While it is not entirely clear when the waiver of service was sent to defendant Sisodia, it appears
27 that it was sent on March 29, 2017. (ECF No. 31, p. 1). Moreover, even if defendant Sisodia filed his answer a few
28 weeks late, the Court would not grant Plaintiff a default judgment. Pena v. Seguros La Comercial, S.A., 770 F.2d
811, 814 (9th Cir. 1985) ("[D]efault judgments are generally disfavored. Whenever it is reasonably possible, cases
should be decided upon their merits.").

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Accordingly, IT IS ORDERED that Plaintiff's motion for reconsideration by the assigned district judge is DENIED.

IT IS SO ORDERED.

Dated: June 19, 2017

/s/ Lawrence J. O'Neill
UNITED STATES CHIEF DISTRICT JUDGE