1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 EASTERN DISTRICT OF CALIFORNIA 9 10 11 WILLIAM L. SNOW, Case No.: 1:15-cv-01606-SAB (PC) 12 Plaintiff, ORDER GRANTING PLAINTIFF'S MOTION FOR ENTRY OF DEFAULT AS TO 13 v. **DEFENDANT SHWE** 14 DOCTOR SHWE, [ECF No. 17] 15 Defendant. 16 Plaintiff William L. Snow is appearing pro se and in forma pauperis in this civil rights action 17 pursuant to 42 U.S.C. § 1983. 18 This action is proceeding against Defendant Doctor Shwe for deliberate indifference to a 19 20 serious medical need in violation of the Eighth Amendment. 21 Currently before the Court is Plaintiff's motion for entry of default as to Defendant Shwe, filed September 9, 2016. (ECF No. 17.) 22 23 In general, "[a] summons must be served with a copy of the complaint." Fed. R. Civ. P. 24 4(c)(1). However, many defendants have "a duty to avoid unnecessary expenses of serving the summons." Fed. R. Civ. P. 4(d)(1). "The plaintiff may notify such a defendant that an action has been 25 26 commenced and request that the defendant waive service of a summons." Id. 27 Federal Rule of Civil Procedure 12 provides that a defendant who has timely waived service

under Rule 4(d) must respond "within 60 days after the request for a waiver was sent, or within 90

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days after it was sent to a defendant outside any judicial district of the United States." Fed. R. Civ. P. 12(a)(1)(A)(ii). Federal Rule of Civil Procedure 55(a) requires that the Clerk of the Court enter default "when a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise." Fed. R. Civ. P. 55(a).

Pursuant to Rule 12, Defendant had sixty days after the request for waiver was sent to file a responsive pleading. The docket in this case reflects that the United States Marshal served Defendant Shwe by mail on June 6, 2016. (ECF No. 16.) Shwe returned a waiver of service of summons form on July 13, 2016. (Id.) The waiver is signed by James Walker, as attorney for Shwe and states that he understands that judgment may be entered against him if he does not file an answer or motion under Federal Rule of Civil Procedure 12 within sixty days of June 6, 2016. (Id.) Pursuant to Rule 12, Defendant Shwe's response pleading was due August 5, 2016. To date, no responsive pleading has been filed, and Plaintiff's motion for entry of default shall be granted.

Accordingly, it is HEREBY ORDERED that:

- 1. Plaintiff's motion for entry of default against Defendant Shwe is GRANTED, and
- 2. The Clerk of Court is directed to enter default against Defendant Shwe.

IT IS SO ORDERED.

Dated: **September 14, 2016**

UNITED STATES MAGISTRATE JUDGE