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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RASHAD KING,
Plaintiff,
v.
S. HOLLAND, et al.,
Defendants.

Case No. 1:15-cv-01885-BAM (PC)
**ORDER DENYING REQUEST FOR ENTRY
OF DEFAULT**
(ECF No. 28)

Plaintiff Rashad King (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action under 42 U.S.C. § 1983. This action proceeds on Eighth Amendment violations against Defendants Holland and Duncan for excessive force during the first escort; against Defendants, Holland, Duncan and Solis for excessive force in the second cell; against Defendant Tingley for failing to intervene in the attack by Defendants Holland, Solis and Duncan in the second cell; and sexual assault against Defendant Holland.

On December 22, 2016, the Court directed the United States Marshal to serve the operative complaint and summons on Defendants Holland, Duncan, Solis and Tingley. (ECF No. 18.) On March 7, 2017, the United States Marshal returned waivers of service executed by

1 Defendants Duncan, Holland and Tingley.¹ Pursuant to the waivers of service, Defendants
2 Duncan, Holland and Tingley were directed to respond to the operative complaint within 90 days
3 of January 9, 2017, which is calculated as March 10, 2017. (ECF No. 26.) On March 10, 2017,
4 Defendants Duncan, Holland and Tingley filed an answer to the operative complaint. (ECF No.
5 27.)

6 On March 20, 2017, Plaintiff filed a document titled "Declaration for Entry of Default."
7 (ECF No. 28.) The Court construes this document as a request for entry of default as to
8 Defendants Duncan, Holland and Tingley. In his request, Plaintiff contends that Defendants
9 Duncan, Holland and Tingley were served on January 26, 2017, and were required to respond to
10 the complaint within 21 days, but failed to answer or otherwise defend this action. (*Id.*)

11 Plaintiff is mistaken. As noted above, the waivers of service returned executed as to
12 Defendants Duncan, Holland and Tingley required a response to the complaint within 90 days of
13 January 9, 2017, which is March 10, 2017. (ECF No. 26.) Defendants Duncan, Holland and
14 Tingley filed a timely answer to the complaint on March 10, 2017. Thus, Defendants Duncan,
15 Holland and Tingley have not failed to answer or otherwise defend this action. Accordingly,
16 Plaintiff's request for entry of default is HEREBY DENIED.

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18 IT IS SO ORDERED.

19 Dated: March 27, 2017

/s/ Barbara A. McAuliffe
20 UNITED STATES MAGISTRATE JUDGE

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¹ On March 6, 2017, the Court issued a second order directing service by the United States
Marshal on Defendant Solis. (ECF No. 25.)