

1
2
3
4
5
6 **UNITED STATES DISTRICT COURT**
7

8 EASTERN DISTRICT OF CALIFORNIA
9

10 JAMES MILLNER,) Case No. 1:16-cv-01209-SAB-PC
11 Plaintiff,)
12 v.) ORDER GRANTING PLAINTIFF'S
13 DR. WOODS, et al.,) MOTION FOR ENTRY OF DEFAULT AS
14 Defendants.) TO DEFENDANT HASHEM
15) [ECF No. 26]
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)

Plaintiff James Millner is proceeding pro se in this civil action pursuant to 42 U.S.C. § 1983. This action proceeds against Defendants Woods and Hashem, in their individual capacities, for deliberate indifference to a serious dental need in violation of the Eighth Amendment.

Currently before the Court is Plaintiff's motion for entry of default as to Defendant Hashem, filed on November 14, 2017. (ECF No. 26.)

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 of serving the summons.” Fed. R. Civ. P. 4(d)(1). “The plaintiff may notify such a defendant that an action has been commenced and request that the defendant waive service of a summons.” Id.

Federal Rule of Civil Procedure 12 provides that a defendant must serve a responsive pleading “within 21 days after being served with the summons and complaint.” Fed. R. Civ. P.

1 12(a)(1)(A)(i). Federal Rule of Civil Procedure 55(a) requires that the Clerk of the Court enter
2 default “[w]hen a party against whom a judgment for affirmative relief is sought has failed to
3 plead or otherwise defend, and that failure is shown by affidavit or otherwise. . . .” Fed. R. Civ.
4 P. 55(a).

5 Pursuant to Rule 12, Defendant Hashem had twenty-one days after being served with the
6 summons and complaint to file a responsive pleading. The docket in this case reflects that the
7 Kern County Sheriff-Coroner served Defendant Hashem by personal service on August 3, 2017
8 at 11:04 AM. (ECF No. 19, at p. 1.) More than twenty-one days have passed since service was
9 effected on Defendant Hashem, but no responsive pleading has been filed. Therefore, Plaintiff's
10 motion for entry of default shall be granted.

11 Accordingly, it is HEREBY ORDERED that:

12 1. Plaintiff's motion for entry of default against Defendant Hashem is GRANTED,
13 and

14 2. The Clerk of Court is directed to enter default against Defendant Hashem.

15
16 IT IS SO ORDERED.

17 Dated: November 15, 2017


18 UNITED STATES MAGISTRATE JUDGE

19
20
21
22
23
24
25
26
27
28