

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

TONY ASBERRY,  
Plaintiff,  
v.  
C. RELEVANTE, et al.,  
Defendants.

Case No. 1:16-cv-01741-DAD-MJS (PC)  
**ORDER DENYING REQUEST FOR ENTRY  
OF DEFAULT AND MOTION FOR DEFAULT  
JUDGMENT AS TO DEFENDANTS  
LOZOVY AND RELEVANTE**  
**(ECF NOS. 38, 39)**

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action brought pursuant to 42 U.S.C. § 1983. The action proceeds on the following claims: an Eighth Amendment claim for deliberate indifference to a serious medical need against defendants Lozovoy and Relevante, an Eighth Amendment conditions of confinement claim against defendants Ferris and Godfrey, and a First Amendment retaliation claim against defendants Ferris and Godfrey.

1 On July 18, 2017, Defendants Lozovoy and Relevante timely answered the  
2 complaint. (ECF Nos. 27, 35.) On July 21, 2017, Plaintiff moved for entry of default and  
3 for default judgment as to these Defendants. (ECF Nos. 38, 39.)

4 Federal Rule of Civil Procedure 55(a) requires the Clerk of Court to enter default  
5 against a party when that party has “failed to plead or otherwise defend, and that failure  
6 is shown by affidavit or otherwise.” Once default has been entered, the Plaintiff may  
7 move for the entry of default judgment. Fed. R. Civ. P. 55(b)(2). Here, Defendants  
8 Lozovoy and Relevante timely responded to Plaintiff’s complaint, and there is no basis  
9 for entering default against them.

10 Accordingly, Plaintiff’s request for entry of default and motion for default judgment  
11 are HEREBY DENIED.

12  
13 IT IS SO ORDERED.

14 Dated: September 12, 2017

/s/ Michael J. Seng  
UNITED STATES MAGISTRATE JUDGE