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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TERRENCE BROWNLEE,

Plaintiff,

No. CIV S-06-2680 LKK EFB P

vs.

D.L. PORTER, et al.,

Defendants.

ORDER

_____/

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. Pursuant to an order from the U.S. Court of Appeals for the Ninth Circuit, this court reopened plaintiff’s case and ordered service on defendant T.W. Friedrichs. Dckt. No. 26. On August 6, 2010, plaintiff filed a Motion for Court Intervention because defendant Friedrichs had not answered or otherwise responded to the complaint. Dckt. No. 29. The docket reveals that the U.S. Marshal mailed defendant Friedrichs a waiver of service of summons form on April 14, 2010. Dckt. No. 30. That form provided:

I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not filed within the U.S. District Court and served on plaintiff within 60 days after 4/14/2010, or within 90 days after that date of the request was sent outside the United States.

Id. Defendant Friedrichs, represented by his attorney, did not sign and return the waiver form

1 until July 26, 2010, however. Under Federal Rule of Civil Procedure 12, defendant Friedrichs
2 had 60 days from receipt of the request for waiver of service to file a responsive pleading to
3 plaintiff's complaint. Thus, an answer or motion under Rule 12 should have been filed on or
4 before June 14, 2010. Accordingly, on August 26, 2010, the court ordered defendant Friedrichs
5 to show cause why a default judgment should not be ordered against him for failure to plead or
6 otherwise defend. *See* Fed. R. Civ. P. 55(a).

7 Within four days of service of the order to show cause, defendant Friedrichs filed an
8 answer to plaintiff's complaint. Defendant Friedrichs has also responded to the order to show
9 cause, informing the court that, for various reasons, counsel for defendant Friedrichs did not
10 receive the waiver of service of summons until July 25, 2010. As defendant Friedrichs has filed
11 an answer and the action may now proceed, the court discharges the August 26, 2010 order to
12 show cause. The case shall proceed according to the discovery and scheduling order issued
13 herewith.

14 Dated: September 13, 2010.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE