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

CHRISTOPHER KYLE PRATER,

Plaintiff,

No. CIV S-07-1242 FCD EFB P

vs.

M. C. KRAMER, et al.,

Defendants.

ORDER

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Plaintiff is a prisoner without counsel suing for alleged civil rights violations. *See* 42 U.S.C. § 1983. On October 25 and 30, 2007, plaintiff filed documents styled, “Motion for Summary Judgment,” in which he requests the Clerk of the Court to enter defendant K. J. Anderson’s default. The court construes the motion as a request for entry of default and thus construed, finds that it must be denied.

Federal Rule of Civil Procedure 55 states:

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party’s default.

A party who waives service of process has 60 days from the date the request for waiver was sent to serve an answer. Fed. R. Civ. P. 4(d)(3). The court may extend this time for good cause shown. *See* Fed. R. Civ. P. 6(b). The United States Marshall sent a request for waiver on

1 August 21, 2007. On October 19, 2007, defendant requested an extension of time to respond to  
2 the complaint. On October 22, 2007, the court granted defendant an additional 30 days to  
3 respond to the complaint. On November 21, 2007, defendant filed a motion to dismiss. Thus,  
4 defendant complied with all applicable rules and orders, and timely responded to the complaint.

5 Accordingly, plaintiff's motions filed October 25 and 30, 2007 (Docket Nos. 22 & 23) ,  
6 are denied. The Clerk of the Court shall not enter the default of defendant J. J. Anderson.

7 So ordered.

8 Dated: February 1, 2008.

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10 EDMUND F. BRENNAN  
11 UNITED STATES MAGISTRATE JUDGE  
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