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

LACEDRIC JOHNSON,

Plaintiff,

No. 2:08-cv-1609 JAM KJN P

vs.

D.K. SISTO, et al.,

Defendants.

ORDER

_____/

Plaintiff is a state prisoner proceeding without counsel. On January 13, 2011, defendant Fleischman was ordered to show good cause for his failure to waive service of process, and to show cause why default should not be entered against him for his failure to timely appear. On February 1, 2011, defendants filed a response to the order to show cause, and defendant Fleischman filed a motion to dismiss.

Defendant Fleischman has shown good cause for his failure to waive service of process. First, defendant Fleischman was not contracted with California State Prison-Solano at the time the litigation coordinator received the waiver from the U.S. Marshal. (Dkt. No. 73 at 2.) Second, the litigation coordinator returned the waiver to the U.S. Marshal with contact information for the contract agency responsible for defendant Fleischman’s contract with California State Prison-Solano. (Id.) Third, defendant Fleischman did not receive the waiver at

1 any time. (Fleischman Decl. at ¶ 6.) Accordingly, the order to show cause is discharged, and
2 defendant Fleischman is relieved of his obligation to pay the U.S. Marshal the sum of \$140.00.

3 As noted above, defendant Fleischman has now filed a motion to dismiss.
4 Defendant Fleischman has shown good cause for the delay in filing a responsive pleading.
5 Accordingly, the court finds defendant's motion timely filed, and plaintiff will be directed to file
6 an opposition. Plaintiff is cautioned that failure to file an opposition may be deemed as consent
7 to have the pending motion granted.

8 Accordingly, IT IS HEREBY ORDERED that:

- 9 1. The January 13, 2011 order to show cause is discharged;
10 2. Defendant Fleischman is relieved of his obligation to pay the U.S. Marshal the
11 sum of \$140.00;
12 3. Defendant Fleischman's February 1, 2011 motion to dismiss is deemed timely-
13 filed; and
14 4. Plaintiff shall file an opposition to defendant Fleischman's motion to dismiss
15 within twenty-one days from the date of this order. Local Rule 230(l). Defendant Fleischman's
16 reply, if any, shall be filed seven days thereafter.

17 DATED: February 1, 2011

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20 KENDALL J. NEWMAN
21 UNITED STATES MAGISTRATE JUDGE

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