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

ANTHONY R. TURNER,

No. 2:09-CV-3040-GEB-CMK-P

Plaintiff,

| V

vs. <u>ORDER</u>

CALIFORNIA FORENSIC MEDICAL GROUP, et al.,

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Defendants.

Plaintiff, a state prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court are several motions plaintiff has filed.

Motion for Default Judgment, Doc. 85

First, plaintiff has filed a motion for default judgment against the defendants, based on plaintiff's allegation that the defendants failed to file a timely response to his amended complaint. The amended complaint in this action was filed back in October 2010, in response to the court's dismissal of his original complaint. The defendants then filed numerous responses to the amended complaint, including a motion for more definite statement, which was denied, and answers to the amended complaint. These were all filed by the end of 2011.

A defendant is not in "default" unless he "has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise." Fed. R. Civ. Proc. 55(a). Here, all of the defendants were either dismissed or appropriately responded to the amended complaint well before plaintiff's motion for default judgment. None of the defendants are in default, and therefore no basis for default judgment exists. This motion will be denied.

Motions for Settlement Conference, Docs. 86, 98, 105

In these motions, plaintiff is requesting the court hold a settlement conference, wherein plaintiff is allowed to personally appear, in an attempt to settle this action. While settlement conferences are held in prisoner civil rights actions, holding a settlement conference is not appropriate in this case at this time. Discovery issues continue to plague the remaining defendants, who have filed a renewed motion for sanctions based on plaintiff's failure to cooperate with the discovery process. If the court determines a settlement conference would be advantageous in the future, the court will not hesitate to set one. However, now is not the time. These motions will therefore be denied.

Accordingly, IT IS HEREBY ORDERED that

- 1. Plaintiff's motion for default judgment (Doc. 85) is denied;
- 2. Plaintiff's motions for settlement conference (Docs. 86, 98, 105) are denied.

DATED: February 24, 2014

CRAIG M. KELLISON UNITED STATES MAGISTRATE JUDGE