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

JOHN CLINT DRAPER,

Plaintiff,

No. CIV S-10-0032 KJM EFB P

vs.

D. ROSARIO, et al.,

Defendants.

ORDER

_____ /

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. Plaintiff has filed a motion for default judgment, claiming that defendants failed to timely answer his complaint.

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 United States Marshal sent a request for waiver on April 22, 2011. On June 23, 2011, on defendants' request, the court granted an extension of time, making defendants' response due July 21, 2011. Defendants timely filed their motion to dismiss on July 21, 2011.

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Accordingly, plaintiff's motion for default judgment is hereby denied.

So ordered.

DATED: October 26, 2011.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE