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

JACOBY POPE,

Plaintiff,

No. CIV S-11-0101 LKK GGH P

vs.

R. GARCIA, et al.,

Defendant.

ORDER

_____/

On September 7, 2011, an executed summons was filed on behalf of defendant Garcia. The summons indicated that no waiver of personal service had been returned by defendant Garcia and that personal service was carried out on August 31, 2011. On September 13, 2011, plaintiff filed a request for entry of default as to defendant Garcia and a judgment against him in the amount of \$150,000.00. Plaintiff's request is predicated on plaintiff's contention that defendant Garcia failed to file or serve an answer or other response more than 35 days after service of the summons and complaint.

Pursuant to Fed. R. Civ. P. 12(a)(1)(A), a defendant, like defendant Garcia, who has not timely waived service "must serve an answer: (i) within 21 days after being served with the summons or complaint...." Defendant Garcia filed and served an answer on September 15, 2011, 15 days after the docket indicates personal service had to be effected upon him (on August

1 31, 2011), i.e., within the limit set forth by Rule 12(a)(1)(A)(i).

2 Accordingly, IT IS ORDERED that plaintiff's request for entry of a default
3 against defendant Garcia, filed on September 13, 2011 (docket # 21), is denied. As no entry of
4 default has been made. There can be no judgment of default.

5 DATED: September 22, 2011

6 /s/ Gregory G. Hollows
UNITED STATES MAGISTRATE JUDGE

7 GGH:009
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