

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

ANDRE JAMAL ROBINSON,

Plaintiff,

No. 2:11-cv-2555 MCE AC P

vs.

MATTHEW CATE, et al.

Defendants.

ORDER

_____/

Plaintiff is a prisoner proceeding pro se in this civil action brought pursuant to 42 U.S.C. § 1983. Defendants waived service of the complaint, and filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). See Waivers of Service Returned Executed, Feb. 15, 2012 and March 7, 2012, ECF Nos. 15, 16, 17; Motion to Dismiss, Mar. 20, 2012, ECF No. 18.

On February 26, 2013, the court granted defendants’ motion to dismiss, dismissing the complaint as moot against defendant McDonald, and dismissing the complaint with leave to amend against defendants Cate and Guirbino. See Order, Feb. 26, 2012, ECF No. 35. On March 27, 2013, plaintiff filed an amended complaint against defendants Cate and

1 Guirbino; however, to date, defendants Cate and Guirbino have not responded to the amended
2 complaint.

3 By order filed May 8, 2013, the court directed defendants to show cause why
4 default should not be entered against them for failure to respond to the amended complaint. See
5 Fed. R. Civ. Proc. 12(a)(4). Defendants have now responded, and advise the court that they have
6 not responded to the amended complaint because the court has not screened it, as the defendants
7 argue the Court is required to do under 28 U.S.C. § 1915A(b).

8 In light of defendants' response, the undersigned will not recommend that default
9 be entered against defendants; however, the undersigned will direct that defendants' response to
10 the amended complaint shall be due within 21 days of the filing date of this order. Defendants
11 have waived service, and are represented by counsel. If defendants believe that the amended
12 complaint fails to state a claim, or is subject to dismissal for any other reason, the court will
13 entertain a noticed motion for dismissal, or for whatever other relief defendants believe
14 appropriate.

15 Accordingly, IT IS HEREBY ORDERED that

- 16 1. The court's May 8, 2013 order to show cause is discharged; and
17 2. Defendants shall file their response to the amended complaint within 21 days
18 of the filing date of this order. Defendants' failure to file a response shall result in a
19 recommendation that the court enter default against the defendants.

20 DATED: May 21, 2013

21
22 
23 ALLISON CLAIRE
24 UNITED STATES MAGISTRATE JUDGE

25 AC:rb
26 robi2555.osc(2)