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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PAUL DAVID JOHNSON,
Plaintiff,
v.
E. NAKU, M.D., et al.,
Defendants.

No. 2:15-cv-1313 TLN KJN P

ORDER

Plaintiff is a prisoner, proceeding pro se and in forma pauperis. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983. The court issued orders to show case to defendants Dr. Collinsworth and Dr. Naku. (ECF Nos. 82, 87.) On September 10, 2020, Dr. Naku filed a response. (ECF No. 94.) On September 21, 2020, Dr. Collinsworth filed a response. (ECF No. 98.) Both responses were in the form of a letter. Dr. Naku addressed the merits of plaintiff's claims, and contends he should not be named in this lawsuit. Dr. Collinsworth claims he has no recollection of the plaintiff, but had no intention of not complying with service of process or any court requests.

While not entirely clear, the doctors' responses suggest an intention to defend this action, but neither doctor has filed an answer or otherwise responded to plaintiff's pleading. See Direct Mail Specialists v. Eclat, 840 F.2d 685, 689 (9th Cir. 1988) (no clerk's default can be entered if the defendant has filed a response indicating his intent to defend the action). It is also not clear

1 whether the doctors intend to retain counsel or defend the action in propria persona, without
2 benefit of counsel.¹ To date, despite Dr. Naku's contention that he should not be named as a
3 defendant herein, Dr. Naku has not filed a motion to dismiss. See, e.g., Fed. R. Civ. P. 12.

4 In any event, defendant doctors' filings constitute an appearance on the record such that
5 the Clerk of the Court is precluded from entering Clerk's default. Fed. R. Civ. P. 55(a).

6 However, absent any further attempt to defend on the merits, such appearances do not preclude
7 this court from finding such defendants in default for failure to plead or otherwise defend.

8 Rather, such defendants are simply entitled to receive notice of any application for default
9 judgment. Fed. R. Civ. P. 55(b).

10 Therefore, defendants Naku and Collinsworth are granted an extension of time in which to
11 file a responsive pleading; if either fail to so respond, plaintiff may then file a motion for default
12 judgment, which must be served on each nonresponding defendant. Fed. R. Civ. P. 55(b)(2).

13 Accordingly, IT IS HEREBY ORDERED that:


14 1. The orders to show cause (ECF Nos. 82 & 87) are discharged.

15 2. The filings by Dr. Naku and Dr. Collinsworth (ECF Nos. 94 & 98) constitute their
16 appearances on the record; such appearances preclude clerk's entry of default.

17 3. Defendants Dr. Naku and Dr. Collinsworth are granted thirty days in which to file an
18 answer or other responsive pleading. Failure to comply with this order may result in entry of
19 default judgment against them.

20 4. The Clerk of the Court is directed to serve a copy of this order on Monica Anderson,
21 Supervising Deputy Attorney General.

22 Dated: January 21, 2021

23 
24 _____
KENDALL J. NEWMAN
25 UNITED STATES MAGISTRATE JUDGE

26 /john1313.def.dfts

27 ¹ According to their letters, both doctors appear to have been employed by the California
28 Department of Corrections at the time of the incidents alleged herein, but neither doctor stated he
had requested representation by the Office of the California State Attorney General.