

1 clerk's entry of default under Rule 55(a) of the Federal Rules of Civil Procedure. (ECF Nos. 136,
2 138.) Given the Clerk's entry of default, no jury trial is required. Therefore, plaintiff's request
3 for jury trial is denied. The Court now sets a deadline for plaintiff to move for default judgment
4 under Rule 55(b)(2).

5 Operative Pleading

6 This action proceeds on plaintiff's third amended complaint. (ECF No. 54.) Plaintiff
7 alleges that defendant Dr. Naku was deliberately indifferent to plaintiff's serious medical needs in
8 violation of the Eighth Amendment.

9 Standards Governing Default Judgment

10 Once default has been entered, a plaintiff may apply to the Court for entry of default
11 judgment pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure. Generally, default
12 judgments are disfavored. See Eitel v. McCool, 782 F.2d 1470, 1472 (9th Cir. 1986). The choice
13 whether a default judgment should be entered is at the sole discretion of the district court. See
14 Aldabe v. Aldabe, 616 F.2d 1089, 1092 (9th Cir. 1980); Lau Ah Yew v. Dulles, 236 F.2d 415,
15 416 (9th Cir. 1956) ("It is conceded that the grant or denial of a motion for the entry of a default
16 judgment is within the discretion of the court."). A defendant's default alone does not entitle a
17 plaintiff to a court-ordered judgment. See Aldabe, 616 F.2d at 1092. Instead, the Ninth Circuit
18 has determined that a court should look at seven discretionary factors before rendering a decision
19 on default judgment. See Eitel, 782 F.2d at 1471-72. Such factors are: (1) the possibility of
20 prejudice to the plaintiff; (2) the merits of plaintiff's substantive claim; (3) the sufficiency of the
21 complaint; (4) the sum of money at stake in the action; (5) the possibility of a dispute concerning
22 material facts; (6) whether the default was due to excusable neglect; and (7) the strong policy
23 underlying the Federal Rules of Civil Procedure favoring decisions on the merits. Id.

24 As a general rule, once default is entered, well-pleaded factual allegations in the operative
25 complaint are taken as true, except for those allegations relating to damages. TeleVideo Sys., Inc.
26 v. Heidenthal, 826 F.2d 915, 917-18 (9th Cir. 1987) (per curiam) (citing Geddes v. United Fin.
27 Group, 559 F.2d 557, 560 (9th Cir. 1977) (per curiam)); see also Fair Housing of Marin v.
28 Combs, 285 F.3d 899, 906 (9th Cir. 2002). Although well-pleaded allegations in the complaint

1 are admitted by a defendant's failure to respond, "necessary facts not contained in the pleadings,
2 and claims which are legally insufficient, are not established by default." Cripps v. Life Ins. Co.
3 of N. Am., 980 F.2d 1261, 1267 (9th Cir. 1992) (citing Danning v. Lavine, 572 F.2d 1386, 1388
4 (9th Cir. 1978)); accord DIRECTV, Inc. v. Huynh, 503 F.3d 847, 854 (9th Cir. 2007) ("[A]
5 defendant is not held to admit facts that are not well-pleaded or to admit conclusions of law"
6 (citation and quotation marks omitted)); Abney v. Alameida, 334 F.Supp.2d 1221, 1235 (S.D.
7 Cal. 2004) ("[A] default judgment may not be entered on a legally insufficient claim."). Thus, a
8 party's default conclusively establishes that party's liability on sufficiently-pleaded claims, but
9 does not establish the amount of damages. Geddes, 559 F.2d at 560; see also Adriana Int'l Corp.
10 v. Thoeren, 913 F.2d 1406, 1414 (9th Cir.1990); Doe v. Rafael Saravia, 348 F.Supp.2d 1112,
11 1143 (E.D. Cal. 2004). To obtain a default judgment against a defendant for a claim for uncertain
12 damages, the plaintiff must prove the amount of damages he seeks. Shanghai Automation
13 Instrument Co., Ltd. v. KUEI, 194 F.Supp.2d 995, 1010 (N.D. Cal. 2001).

14 Discussion

15 Plaintiff is granted sixty days from the date of this order in which to file a motion for
16 default judgment as to remaining defendant Dr. Naku. Plaintiff's motion for default judgment
17 shall provide developed argument, including citation to the record and relevant legal authority, in
18 addressing the requirements discussed above and any other applicable requirements. See Fed. R.
19 Civ. P. 7(b)(1)(B) (noting that motions must "state with particularity the grounds for seeking the
20 order"). Plaintiff's motion should also provide evidence to support any claim for damages.

21 Request for Counsel

22 District courts lack authority to require counsel to represent indigent prisoners in section
23 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In exceptional
24 circumstances, the court may request an attorney to voluntarily represent such a plaintiff. See 28
25 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v.
26 Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). When determining whether "exceptional
27 circumstances" exist, the court must consider plaintiff's likelihood of success on the merits as
28 well as the ability of the plaintiff to articulate his claims pro se in light of the complexity of the


1 legal issues involved. Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009) (district court did not
2 abuse discretion in declining to appoint counsel). The burden of demonstrating exceptional
3 circumstances is on the plaintiff. Id. Circumstances common to most prisoners, such as lack of
4 legal education and limited law library access, do not establish exceptional circumstances that
5 warrant a request for voluntary assistance of counsel.

6 Having considered the factors under Palmer, the court finds that plaintiff failed to meet his
7 burden of demonstrating exceptional circumstances warranting the appointment of counsel at this
8 time.

9 Accordingly, IT IS HEREBY ORDERED that:

- 10 1. Plaintiff's motion for jury trial (ECF No. 225) is denied;
- 11 2. Plaintiff is granted sixty days from the date of this order in which to file a motion for
12 default judgment against defendant Dr. Binoye Naku consistent with the above order; and
- 13 3. Plaintiff's motion for the appointment of counsel (ECF No. 225) is denied without
14 prejudice.

15 Dated: June 29, 2023

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18 KENDALL J. NEWMAN
19 UNITED STATES MAGISTRATE JUDGE

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