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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

AARON LAMONT STRIBLING,  
Plaintiff,  
v.  
R. MOTT, et al.,  
Defendants.

No. 2:16-cv-0400 CKD P

ORDER

Plaintiff has filed a motion seeking to exclude the answer to the complaint filed by Lucas Hennes, counsel for defendants Mott, Terry, Morrow, Johnson, Murillo, Molina, Glenn, Andrichuck, and Schnider, on the ground that Mr. Hennes falsely represented that the defendants had been served. ECF No. 35. This claim is based upon the fact that plaintiff has not received receipts for the return of the service waivers. Id. Plaintiff's request will be denied. Although plaintiff may not have received any documentation showing defendants waived service, the waivers have been properly filed with the court. ECF Nos. 30, 32, 34. Mr. Hennes properly waived service and responded to the complaint on behalf of his clients.

Plaintiff also states that a default judgment should be entered against defendant Salz because he has failed to respond to the complaint. ECF No. 35. Before a default judgment can be entered, there must first be a default entered. See Fed. R. Civ. P. 55. Plaintiff's request for default judgment against defendant Salz will therefore be denied as premature. However,

1 defendant Salz was required to respond to the complaint by September 18, 2017, and has failed to  
2 do so. ECF No. 29; Fed. R. Civ. P. 12(a). Defendant Salz will therefore be required to file a  
3 responsive pleading and show cause why he should not be sanctioned for failure to timely  
4 respond to the complaint. Failure to file a responsive pleading will result in default being entered  
5 against defendant Salz, at which point plaintiff would be entitled to move for default judgment.

6 Accordingly, IT IS HEREBY ORDERED that:

7 1. Plaintiff's request to exclude the answer filed by defendants Mott, Terry, Morrow,  
8 Johnson, Murillo, Molina, Glenn, Andrichuck, and Schnider and to enter default judgment against  
9 defendant Salz (ECF No. 35) is denied.

10 2. Within fourteen days of service of this order, defendant Salz (or his counsel if he is  
11 represented) must file and serve the following: (1) a response to the complaint and (2) a verified  
12 statement showing cause for the delay in filing a responsive pleading and why sanctions should  
13 not be imposed.

14 3. The Clerk of the Court is directed to serve a copy of this order on Donald L. Salz at  
15 California State Prison, Sacramento, P.O. Box 290001, Represa, CA 95671. The Clerk of the  
16 Court shall also fax a courtesy copy of this order to the Litigation Coordinator at California State  
17 Prison, Sacramento at (916) 294-3072.

18 Dated: September 25, 2017

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CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

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