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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

By order filed September 25, 2017, the undersigned denied plaintiff's first request for a default judgment against defendant Salz because plaintiff had not first moved for entry of default. (ECF No. 36.) Defendant Salz was then given fourteen days to file and serve a response to the complaint and show cause why he should not be sanctioned for failing to timely respond to the complaint. (Id.) After fourteen days passed without a response from Salz, plaintiff moved for entry of default and default judgment against Salz. (ECF No. 37.) Three days after plaintiff's motion was entered on the court's docket, Salz filed an answer to the complaint. (ECF No. 39.) He subsequently filed a declaration explaining his delay in responding to the complaint. (ECF No. 41.)

Because defendant Salz has now answered the complaint and demonstrated his intent to defend against plaintiff's allegations and there does not appear to be any prejudice to plaintiff, the request for entry of default will be denied. Hoang Minh Tran v. Gore, No. 10cv2457

1 BTM(WVG), 2012 WL 2501036, at \*1, 2012 U.S. Dist. LEXIS 89941, at \*3 (S.D. Cal. June 27,  
2 2012) (declining to enter default where defendant filed late answer and there was no prejudice to  
3 plaintiff); see also Westchester Fire Ins. Co. v. Mendez, 585 F.3d 1183, 1189 (9th Cir. 2009) (“As  
4 a general rule, default judgments are disfavored; cases should be decided upon their merits  
5 whenever reasonably possible.”). Because the court declines to enter default against defendant  
6 Salz, the motion for entry of default judgment will also be denied.

7 In his declaration, defendant Salz attests that he believed returning the waiver constituted  
8 an answer to the complaint. (ECF No. 41 at 2, ¶ 7.) He further avers that upon receiving the  
9 court’s September 25, 2017 order to show cause, he promptly arranged for counsel to represent  
10 him and counsel was assigned and filed a response to the complaint on October 20, 2017. (Id.,  
11 ¶¶ 8-9.) Based upon the facts presented, the court finds that defendant Salz did not act to  
12 deliberately delay these proceedings and that the imposition of sanctions is not warranted under  
13 these circumstances.

14 Accordingly, IT IS HEREBY ORDERED that:

- 15 1. Plaintiff’s motion for entry of default and default judgment (ECF No. 37) is denied.
- 16 2. The September 25, 2017 order to show cause (ECF No. 36) is discharged.

17 Dated: October 24, 2017

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20 CAROLYN K. DELANEY  
21 UNITED STATES MAGISTRATE JUDGE

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