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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DOMINIQUE MERRIMAN,
Plaintiff,
v.
JAMES TELANDER, et al.,
Defendants.

No. 2:16-cv-2030-JAM-EFB P

ORDER

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. He has filed two motions for preliminary injunction (ECF Nos. 26 & 29), three motions requesting that the court order defendants to answer his complaint (ECF Nos. 27, 30, & 33), and a motion for extension of time to file a reply to defendants’ opposition to his second motion for preliminary injunction (ECF No. 40). For the reasons stated hereafter, the court will deny plaintiff’s motions requesting the court order defendants to file answer as moot and grant his motion for extension of time. It will defer issuing findings and recommendations on his motions for preliminary injunction until plaintiff’s reply has been submitted or the extension of time for doing so has elapsed.

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1 I. Motions for Order Directing an Answer

2 On February 21, 2017, the court determined that plaintiff's Eighth Amendment
3 claims of deliberate indifference to mental health needs against defendants Kentner, Romano,
4 Blain, Jerusik, Wallis, Telander, Farris, and Coffin were cognizable. ECF No. 10 at 2-3. On June
5 6, 2017, defendants filed a motion to dismiss plaintiff's complaint. ECF No. 18. That motion
6 was denied on December 20, 2017 when the district judge adopted this court's findings and
7 recommendations. ECF Nos. 21 & 25. Defendants had fourteen days from that date to file their
8 answer. *See* Fed. R. Civ. P. 12(a)(4)(A). They failed to do so and, in the interim, plaintiff (as
9 noted *supra*) filed three motions seeking a court order compelling defendants to file their answer.
10 ECF Nos. 27, 30, & 33.

11 On February 23, 2018, the court entered an order directing defendants to show cause, in
12 writing, why default should not be entered against them for failure to timely answer the
13 complaint. ECF No. 38. On March 2, 2018, defendants filed an answer to plaintiff's complaint
14 (ECF No. 41) and a response to the foregoing show cause order (ECF No. 42). Defendants'
15 counsel states that she overlooked the district judge's order adopting this court's finding and
16 recommendations denying the motion to dismiss and, consequently, failed to calendar a date for
17 filing an answer. *Id.* at 3 ¶ 10.

18 The court will discharge its show cause order. It accepts the explanation offered by
19 defendants' counsel and concludes that there is no evidence of bad faith. And given that
20 defendants filed an answer concurrently with the show cause response, the court finds it
21 appropriate to deny plaintiff's motions for order (ECF Nos. 27, 30, & 33) as moot.

22 II. Motion for Extension of Time

23 As noted above, on February 26, 2018 plaintiff filed a motion for extension of time to file
24 a reply to defendants' opposition to his motion for preliminary injunction. ECF No. 40. He states
25 that he did not receive defendants' opposition, which was filed with the court on February 8, 2018
26 (ECF No. 36), until February 16, 2016. ECF No. 40 at 4. Now, he asks for an extension of time
27 until February 20, 2018 to file his reply. *Id.* at 5. Given that this motion for extension of time
28 was filed after that date, it is unclear whether this requested date is a typographical error. In any

1 event, the court will grant plaintiff's motion and direct him to file his reply, if any, within
2 fourteen days from the date of service of this order.

3 III. Conclusion

4 Accordingly, it is hereby ORDERED that:

5 1. Based on defendants' response and answer (ECF Nos. 41 & 42), the order directing
6 them to show cause why default should not be entered against them (ECF No. 38) is
7 DISCHARGED;

8 2. Plaintiff's Motions for Court Order Directing Defendants to Answer Complaint (ECF
9 Nos. 27, 30, & 33) are DENIED as MOOT; and

10 3. Plaintiff's Motion for Extension of Time (ECF No. 40) is GRANTED and he shall
11 have fourteen days from the date of service of this order to submit his reply to defendants'
12 opposition to his motion for preliminary injunction (ECF No. 36).

13 DATED: March 8, 2018.

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15 EDMUND F. BRENNAN
16 UNITED STATES MAGISTRATE JUDGE
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