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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NOU THAO,
Plaintiff,
v.
JOE DOBIE, et al.,
Defendants.

Case No. [16-cv-01098-PJH](#)
ORDER ON MOTIONS
Re: Dkt. Nos. 11, 16, 19, 20

Plaintiff, a state prisoner, proceeds with a pro se civil rights complaint under 42 U.S.C. § 1983. In this action plaintiff alleges that he was required to clean and work in an area containing lead paint and asbestos but defendant failed to provide proper protective clothing and the correct mask. He states that he was provided a shower but was not given fresh clothing and he had to wear the same clothing that was exposed to the lead paint and asbestos. Plaintiff does not describe any health effects but states prison officials will not have him tested and he continues to be exposed to asbestos. Plaintiff has filed a motion for default judgment and a motion to compel defendants to answer the complaint pursuant to 42 U.S.C. 1997e(g)(2). Defendants oppose the motion and seek an extension to file dispositive motions.

MOTION TO COMPEL AN ANSWER

42 U.S.C. 1997e(g) provides that :

(1) Any defendant may waive the right to reply to any action brought by a prisoner confined in any jail, prison, or other correctional facility under section 1983 of this title or any other Federal law. Notwithstanding any other law or rule of procedure, such waiver shall not constitute an admission of the allegations contained in the complaint. No relief shall be granted to the plaintiff unless a reply has been filed.

1 (2) The court may require any defendant to reply to a
2 complaint brought under this section if it finds that the plaintiff
has a reasonable opportunity to prevail on the merits.

3 Defendants argue that they should not be required to file an answer because
4 plaintiff does not have a reasonable opportunity to prevail on the merits. Defendants note
5 that this action is based on speculative future harm and plaintiff presents no allegations of
6 any injury. Defendants' argument is well taken. Plaintiff concedes in the complaint that
7 he does not know if he has suffered any injury. Defendants' will not be required to reply
8 to the complaint at this time, yet if the case continues after dispositive motions are
9 adjudicated, the court may require defendants to file an answer.

10 In their opposition to the motion to file an answer, defendants Dobie, Early, Loreda
11 and Smith have filed a request that plaintiff's action be dismissed as frivolous pursuant to
12 28 U.S.C. § 1915(e) or that plaintiff show cause why summary judgment should not
13 granted sua sponte pursuant to Fed. R. Civ. P. 56(f). Docket No. 18. Plaintiff has filed a
14 response. Docket No. 21.

15 The court previously screened the complaint pursuant to 28 U.S.C. § 1915 and
16 found that liberally construed, plaintiff's claims were sufficient to proceed. While the court
17 finds that plaintiff does not have a reasonable opportunity to prevail on the merits, the
18 court still finds that plaintiff presents sufficient allegations to proceed beyond § 1915
19 screening. Defendants' request is denied but they may raise their arguments in a
20 dispositive motion.

21 **MISCELLANEOUS MOTIONS**

22 Plaintiff's motion for default judgment is denied because defendants timely filed a
23 waiver of reply to the complaint. Moreover, good cause appearing, it is hereby ordered
24 that defendants' requests for extensions are granted. Defendants have until February 15,
25 2017, to file dispositive motions.

26 **CONCLUSION**

27 1. Plaintiff's motions for default judgment and to compel an answer (Docket Nos.
28 11, 16) are **DENIED**.

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2. Defendants' motions for extensions (Docket Nos. 19, 20) are **GRANTED**.
Defendants have until **February 15, 2017**, to file dispositive motions.

3. Defendant's request for dismissal or an order to show cause (Docket No. 18) is
DENIED for the reasons set forth above.

IT IS SO ORDERED.

Dated: January 12, 2017



PHYLLIS J. HAMILTON
United States District Judge

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NOU THAO,
Plaintiff,
v.
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Defendants.

Case No. [16-cv-01098-PJH](#)

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on January 12, 2017, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Nou Thao ID: Prisoner Id J-27560
San Quentin State Prison
San Quentin, CA 94974

Dated: January 12, 2017

Susan Y. Soong
Clerk, United States District Court

By: *Nichole Peric*
Nichole Peric, Deputy Clerk to the
Honorable PHYLLIS J. HAMILTON