UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MAURICE TAYLOR #112401,

Plaintiff,

v.

Case No. 2:17-cv-12271
District Judge David M. Lawson
Magistrate Judge Anthony P. Patti

CORIZON MEDICAL CORPORATION and THE MICHIGAN DEPARTMENT OF CORRECTIONS,

Defendants.
_____/

ORDER DENYING PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT (DE 12)

I. BACKGROUND

Plaintiff, a state inmate who is proceeding without the assistance of counsel, filed this action on July 11, 2017, along with an application to proceed *in forma pauperis*, naming as Defendants Corizon Medical Corporation ("Corizon") and the Michigan Department of Corrections (MDOC). (DEs 1, 2.) The Court granted Plaintiff's application on August 21, 2017, and ordered the U.S. Marshals Service to serve the appropriate papers on Defendants without prepayment of costs. (DEs 9, 10.) On September 18, 2017, the Court received notifications that process had been returned executed from the MDOC, but returned unexecuted as to Corizon. (DEs 14, 15.) On October 19, 2017, the Court entered an order directing the U.S.

Marshals Service to serve the appropriate papers on Corizon at a different address, and the U.S. Marshals Service filed an acknowledgement of the receipt of the documents for service on November 21, 2017. (DEs 16, 19.) Counsel subsequently entered an appearance on behalf of for Corizon Health, Inc. on December 13, 2017. (DEs. 20, 21.) On January 4, 2018, Defendant Corizon filed a motion to dismiss for failure to exhaust administrative remedies. (DE 28.)

II. PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT

Plaintiff filed the instant motion for default judgment on September 14, 2017, asserting that Defendant Corizon failed to file "a timely and responsible answer to Plaintiff's meritorious COMPLAINT[.]" (DE 12.) Defendant Corizon filed a response to Plaintiff's motion on January 2, 2014. (DE 26.)

A default judgment would be improper for a number of reasons. First, Defendant Corizon had not been served with Plaintiff's complaint at the time the motion was filed and therefore no answer was required. *See* Fed. R. Civ. P. 4. Indeed, this motion was filed four days before the first waiver of service sent to Corizon was returned unexecuted on September 18, 2017 (DE 14), one month before the Court ordered service on Corizon at a different address on October 19, 2017 (DE 16), and over two months before the U.S. Marshals Service filed its acknowledgement of receipt of service of process documents on November 21, 2017. (DE 19.)

Second, Plaintiff filed this action *in forma pauperis* under the Prisoner Litigation Reform Act ("PLRA"), which provides in relevant part as follows:

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

42 U.S.C. § 1997e(g). As such, even when a defendant is served, it is only required to file an answer if the Court so orders. As Corizon states in its response, it chose not to file a responsive pleading in reliance on the statute. (DE 26.)

Finally, even if the above did not require denial of Plaintiff's motion, he has failed to follow Federal Rule of Civil Procedure 55, which requires the proponent of a motion for default judgment to first obtain a clerk's entry of default. Fed. R. Civ. P. 55(a). No entry of default has been requested in this matter. Accordingly, for all these reasons, Plaintiff's motion is **DENIED**.

IT IS SO ORDERED.

Dated: April 3, 2018

s/Anthony P. Patti
ANTHONY P. PATTI
UNITED STATES MAGISTRATE JUDGE

Certificate of Service

I hereby certify that a copy of the foregoing document was sent to parties of record on April 3, 2018, electronically and/or by U.S. Mail.

s/Michael Williams
Case Manager for the
Honorable Anthony P. Patti