

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ELIJAH MOORE,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 4:13CV01928 AGF
)	
DAVID SHIPLEY, et al.,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

This action is before the Court on Plaintiff's motion for default judgment as to liability against one of the seven named Defendants, Derek Dickey.¹ Plaintiff brought this action² seeking declaratory relief, injunctive relief, and damages for Eighth Amendment and conspiracy claims under 42 U.S.C. § 1983. Plaintiff, a prisoner of the State of Missouri, alleges that Defendants participated in beating and injuring him in retaliation for a relationship with a female staff member. Six of the named Defendants have been served and five of them filed timely answers, but Dickey did not. On March 6, 2015, Clerk's Entry of Default was entered as to Dickey.

Plaintiff now seeks default judgment as to liability against Dickey, in an amount to be determined, as well as the entry of declaratory and injunctive relief against him. The Court will deny without prejudice this motion for default judgment to avoid the possibility

¹ Plaintiff filed a Motion for Leave to Substitute a verified motion for default, requesting that the verified motion (Doc. No. 88) be substituted for his previously filed unverified motion (Doc. No. 83). That motion will be granted, and the previously filed motion will be denied as moot.

² Plaintiff filed this action pro se, but counsel entered on Plaintiff's behalf on August 1, 2014.

of inconsistent results in this case. *See Pfanenstiel Architects, Inc. v. Chouteau Petroleum Co.*, 978 F.2d 430, 433 (8th Cir. 1992) (“[w]hen there are multiple defendants who may be jointly and severally liable for damages alleged by plaintiff, and some but less than all of those defendants default, the better practice is for the district court to stay its determination of damages against the defaulters until plaintiff’s claim against the nondefaulters is resolved.”); *Angelo Iafrate Const., LLC v. Potashnick Const., Inc.*, 370 F.3d 715, 722 (8th Cir. 2004) (“When co-defendants are similarly situated, inconsistent judgments will result if one defendant defends and prevails on the merits and the other suffers a default judgment.”); *Edwards v. Dwyer*, 1:06-CV-1 CAS, 2008 WL 222514, at *1-2 (E.D. Mo. Jan. 25, 2008) (denying motion for default judgment without prejudice as to one defendant in a multiple-defendant case, where the claims against similarly-situated non-defaulting defendants were not yet resolved).

Accordingly,

IT IS HEREBY ORDERED that Plaintiff’s Motion for Leave to Substitute verified motion (Doc. No. 88) is **GRANTED**, and Doc. No. 83 is **DENIED as moot**.

IT IS FURTHER ORDERED that Plaintiff’s motion for default judgment as to liability against Defendant Derek Dickey is **DENIED** without prejudice. (Doc. No. 88-2.)



AUDREY G. FLEISSIG
UNITED STATES DISTRICT JUDGE

Dated this 11th day of March, 2015.