

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ULIOS BROOKS, :
 : NO. 1:09-CV-00922
 Plaintiff, :
 :
 :
 v. : **OPINION AND ORDER**
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 :
 HOMER YATES, et al., :
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 Defendants. :

This matter is before the Court on the Magistrate Judge's Report and Recommendation and Order, (doc. 35), to which no objections were filed. In his Report and Recommendation, the Magistrate Judge recommended that Plaintiff's motions for default judgment (doc. 18), to compel and to order Defendants to show cause (docs. 15, 16 and 17), which motions the Magistrate Judge construed as motions for an entry of default and/or for default judgment, be denied and that Defendants' motion for leave to file answer instanter (doc. 23) be granted. For the reasons indicated herein, the Court ADOPTS the Magistrate Judge's Report and Recommendation in its entirety and AFFIRMS the Magistrate Judge's Order.

Plaintiff is an inmate at the Southern Ohio Correctional Facility and has filed a civil rights action against Officer Yates, Warden Kearns and Institutional Inspector Mahlman, alleging excessive use of force, negligence and retaliation (doc. 35). Plaintiff filed his complaint on December 24, 2009, and Defendants'

answers were due on or before March 24, 2010, and March 25, 2010, respectively (Id.). Defendants did not file timely answers, and Plaintiff filed an application for entry of default on March 30, 2010, and a motion for default judgment on April 9, 2010 (Id.). Defendants then filed their motion to file answer *instanter* and a memorandum opposing Plaintiff's motion for default judgment (Id.).

The Magistrate Judge noted that Rule 55 of the Federal Rules of Civil Procedure does provide for entry of default against a party who fails to plead or defend as outlined by the Rules (Id.). However, the Magistrate Judge further noted that disposition on the merits is preferred to disposition on procedural grounds, and any doubt should be resolved in favor of the non-moving party (Id.). To determine whether to grant a motion for default judgment, the Court should look any culpability of the defaulting defendants, any prejudice to the plaintiff, and any meritorious defenses the defendants may have (Id.).

Here, the Magistrate Judge determined that Defendants' failure to timely respond to Plaintiff's complaint was not a willful failure and therefore did not amount to conduct warranting default judgment (Id.). Further, the Magistrate Judge found that nothing in the record indicated that Plaintiff would be prejudiced by allowing Defendants to file their untimely answer (Id.). Finally, the Magistrate Judge noted that Defendants raised several meritorious defenses in the answer attached to their motion (Id.).

Consequently, the Magistrate Judge recommended that Plaintiff's motions be denied and that Defendants' motion be granted (Id.).

The parties were served with the Magistrate Judge's Report and Recommendation and were therefore afforded proper notice of the Magistrate Judge's Report and Recommendation as required by 28 U.S.C. § 636(b)(1)(C), including the notice that failure to file timely objections to the Report and Recommendation would result in a waiver of further appeal. See United States v. Walters, 638 F.2d 947, 949-50 (6th Cir. 1981). Neither Party filed any objections thereto within the time frame provided for by Fed. R. Civ. P. 72(b) and 28 U.S.C. § 636(b)(1)(C). When no objections have been filed, the Court need only satisfy itself that there is no clear error on the face of the record in order to accept the Magistrate Judge's recommendation. See Advisory Committee Notes to Fed. R. Civ. P. 72; Thomas v. Arn, 474 U.S. 140, 150(1985) ("It does not appear that Congress intended to require district court review of a magistrate judge's factual or legal conclusions, under a de novo or any other standard, when neither party objects to those findings").

Having reviewed this matter pursuant to 28 U.S.C. §636(b), the Court finds no clear error on the face of the record and further finds the Magistrate Judge's Report and Recommendation well-reasoned, thorough, and correct. Accordingly, the Court ADOPTS the Magistrate Judge's Report and Recommendation in its entirety and AFFIRMS the Magistrate Judge's Order (doc. 35) and

therefore DENIES Plaintiff's motions for default judgment (doc. 18), to compel, and to order Defendants to show cause (docs. 15, 16 and 17) and GRANTS Defendants' motion to file answer instanter (doc. 23).

SO ORDERED.

Dated: 8/17/18



S. Arthur Spiegel
United States Senior District Judge