UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

FORREST KENDRID, Plaintiff, v. YAHYA, et al., Defendants.	No. 2: 23-cv-1145 KJN P ORDER

Plaintiff is a state prisoner, proceeding without counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff's motion for default judgment as to defendant Yahiya. (ECF No. 16.) For the reasons stated herein, plaintiff's motion for default judgment is denied.

Background

On October 18, 2023, service on defendant Daniel Yahiya was returned unexecuted due to the misspelling of defendant Daniel Yahiya's last name. (ECF No. 13.) A note on the returned service by the United States Marshal states that the correct spelling of defendant's last name is "Yahya." (Id.) The note states that service will be accepted if defendant's last name is correctly spelled. (Id.) The undersigned separately ordered the United States Marshal to serve defendant Yahya by the correct spelling of his last name.

////

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

Legal Standard

Pursuant to Federal Rule of Civil Procedure ("Rule") 55, obtaining a default judgment is a two-step process. Entry of default is appropriate as to any party against whom a judgment for affirmative relief is sought that has failed to plead or otherwise defend as provided by the Federal Rules of Civil Procedure and where that fact is made to appear by affidavit or otherwise. Fed. R. Civ. P. 55(a). After entry of default, a plaintiff can seek entry of default judgment. Fed. R. Civ. P. 55(b).

Discussion

In the pending motion, plaintiff moves for default judgment as to defendant Yahya on the grounds that defendant failed to file a timely response to plaintiff's complaint after service of process. (ECF No. 16.)

Plaintiff's motion for default judgment is denied for two reasons. First, plaintiff failed to seek entry of default prior to seeking entry of default judgment. Second, and most importantly, defendant Yahya did not fail to plead or otherwise defend this action as required by the Federal Rules of Civil Procedure. As discussed above, defendant Yahya has not yet been served with process. Because defendant Yahya has not yet been served, entry of default is not appropriate.

Having been informed of the correct spelling of defendant's last name, the undersigned will henceforth refer to this defendant as defendant Yahya.

Accordingly, IT IS HEREBY ORDERED that plaintiff's motion for entry of default judgment against defendant Yahya (ECF No. 16) is denied.

Dated: December 6, 2023

KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

Ken1145.def

kc