

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LUIS MANUEL GARCES,

Plaintiff,

v.

J. PICKETT, et al.,

Defendants.

No. 2:17-cv-0319 JAM AC P

ORDER

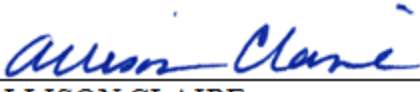
Plaintiff, a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983, has filed a request for entry of default. ECF No. 34. He claims that the court record shows that defendants were served on November 19, 2018, and have failed to answer the complaint within twenty days. Id. It appears that plaintiff has misunderstood the order directing the United States Marshal to serve the complaint.

By order filed November 6, 2018, the United States Marshal was ordered to request a waiver of service of summons from defendants Pickett and Chapman within fourteen days. ECF No. 31 at 1. Plaintiff appears to believe that this order means that defendants were served with the complaint on November 19, 2018, thereby giving them twenty-one days to respond. However, a request to waive service is not the same as service. If defendants chose to waiver service, they have sixty days from the date the waiver was mailed to respond to the complaint. Fed. R. Civ. P. 4(d)(3). Therefore, even if the waiver was mailed on the same day the order

1 issued, if defendants choose to waive service, the earliest their response to the complaint would
2 be due would be January 7, 2019. Accordingly, plaintiff's request for default is premature.

3 For the foregoing reasons, IT IS HEREBY ORDERED that plaintiff's request for entry of
4 default (ECF No. 34) is denied.

5 DATED: December 20, 2018

6 
7 ALLISON CLAIRE
8 UNITED STATES MAGISTRATE JUDGE
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28