

**ENTERED**

July 13, 2022

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

RICHARD SCOTT SHAFER,

Plaintiff,

VS.

JERRY SANCHEZ, *et al.*,

Defendants.

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CIVIL ACTION NO. 2:22-CV-00049

**MEMORANDUM AND RECOMMENDATION  
TO DENY PLAINTIFF’S MOTION FOR DEFAULT JUDGMENT**

Plaintiff, Richard Scott Shafer, appearing *pro se* and *in forma pauperis*, has filed this *pro se* prisoner civil rights action pursuant to 42 U.S.C. § 1983. Pending before the Court is Plaintiff’s Motion for Default Judgment. (D.E. 24). For the reasons discussed below, the undersigned respectfully recommends that this motion be denied.

**I. BACKGROUND**

In his original complaint, Plaintiff sued McConnell Unit Warden Jerry Sanchez in his individual and official capacity. (D.E. 1, p. 2). Plaintiff generally claimed that Sanchez acted with deliberate indifference to his health and safety in that Plaintiff was subjected to: (1) excessive heat conditions in the summers of 2020 and 2021; and (2) infestations of rodents and cockroaches that carry disease during the same time frame. (D.E. 1, pp. 2-7).

Plaintiff sought declaratory, injunctive, and monetary relief. (D.E. 1, pp. 8-9). On March 16, 2022, the undersigned ordered service on Sanchez. (D.E. 8).

On April 8, 2022, Plaintiff filed a motion seeking leave to file an amended complaint, attaching his proposed amended complaint to the motion. (D.E. 10, 10-1). Plaintiff reiterated his deliberate indifference claims against Sanchez in the proposed amended complaint. Plaintiff sought to add deliberate indifference claims against the following defendants in their individual and official capacities: (1) the TDCJ's Executive Director; (2) Officer Zamez; (3) Unknown McConnell Unit Officer; (4) Officer Lara; (5) Unit Grievance Officer A. Johnson; (6) Officer Garner; (7) Sgt. Reyes; (8) Officer Montoya; and (9) Unknown Sergeant. (D.E. 10, 10-1). Plaintiff also sought declaratory, injunctive, and monetary relief in the proposed amended complaint.

By Order entered on April 15, 2022, the undersigned granted Plaintiff's Motion for Leave to Amend Complaint, directed the Clerk of Court to docket the proposed amended complaint as Plaintiff's First Amended Complaint, added the nine additional defendants to the case, and deemed the First Amended Complaint as the operative pleading in this case. (D.E. 11). The undersigned further ordered service of the First Amended Complaint on all ten named defendants. (*Id.* at 2-3).

On May 23, 2022, the undersigned ordered Defendants to show cause within twenty days why a default judgment should not be granted because they had yet to submit a responsive pleading. (D.E. 17). Sanchez responded to the Order to Show Cause, contending that he did not file a responsive pleading to Plaintiff's original complaint

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because it had been superseded by the First Amended Complaint and, therefore, had no legal effect. (D.E. 30, p. 3). Sanchez further explained that he filed a timely responsive pleading to the First Amended Amendment by joining in a Rule 12(b) motion to dismiss. (*Id.*).

On May 31, 2022, the Office of the Attorney General (OAG) filed an Advisory, explaining that the OAG received notice of the Court's April 15, 2022 Order, which directed the OAG either to obtain authority to represent the named defendants in this matter within forty-five days or to file the address of the defendants under seal within the same time period. (D.E. 19). The OAG advised the Court that it was unable to obtain representation for or otherwise identify the following five defendants named in the First Amended Complaint: Officer Zamez, Unknown McConnell Unit Officer, Officer Lara, Sergeant Reyes, and Unknown Sergeant. (*Id.* at 1-2).<sup>1</sup>

On May 31, 2022, Defendants Sanchez, Collier, and Johnson filed a Motion to Dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). (D.E. 20). Defendants' Garner and Montoya filed an answer that same day. (D.E. 21).

## **II. DISCUSSION**

On June 2, 2022, the Court received Plaintiff's Motion for Default Judgment, dated May 27, 2022. (D.E. 24). Plaintiff moves the Court to enter a default judgment against Defendants, contending that they did not file an answer to his original complaint in a timely

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<sup>1</sup> On this day, the undersigned conducted a telephone hearing in this case for the purpose of eliciting information from the parties to help identify these five defendants.

fashion. (*Id.* at 1). Defendants Sanchez, Collier, Johnson, Montoya, and Garner respond that they have filed responsive pleadings and, therefore, have demonstrated their intent to defend against Plaintiff's suit. (D.E. 31).

Federal Rule of Civil Procedure 55 provides in pertinent part that:

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default.

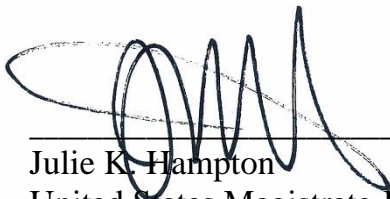
Fed. R. Civ. P. 55(a). "Default judgments are a drastic remedy, not favored by the Federal Rules and resorted to by courts only in extreme situations." *Sun Bank of Ocala v. Pelican Homestead & Sav. Ass'n*, 874 F.2d 274, 276 (5th Cir. 1989).

Plaintiff is not entitled to default judgment in this case. The record reflects that Defendants Sanchez, Collier, Johnson, Montoya, and Garner have filed responsive pleadings to Plaintiff's First Amended Complaint, which is the operative pleading in this case. (D.E. 20, 21). Plaintiff and counsel for the OAG are currently working to identify the five additional defendants named in the First Amended Complaint. Given the current posture of this case, Plaintiff has failed to show that the drastic measure of a default judgment is appropriate against Defendants. Because Plaintiff is not entitled to default judgment in this case, his motion seeking same (D.E. 24) should be denied.

### III. RECOMMENDATION

For the foregoing reasons, the undersigned respectfully recommends that Plaintiff's Motion for default judgment (D.E. 24) be **DENIED**.

Respectfully submitted on July 13, 2022.



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Julie K. Hampton  
United States Magistrate Judge

**NOTICE TO PARTIES**

The Clerk will file this Memorandum and Recommendation and transmit a copy to each party or counsel. Within FOURTEEN (14) DAYS after being served with a copy of the Memorandum and Recommendation, a party may file with the Clerk and serve on the United States Magistrate Judge and all parties, written objections, pursuant to Fed. R. Civ. P. 72(b), 28 U.S.C. § 636(b)(1), General Order No. 2002-13, United States District Court for the Southern District of Texas.

A party's failure to file written objections to the proposed findings, conclusions, and recommendation in a magistrate judge's report and recommendation within FOURTEEN (14) DAYS after being served with a copy shall bar that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. *Douglass v. United Servs. Auto Ass'n*, 79 F.3d 1415 (5th Cir. 1996)(*en banc*).