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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JASON ERIC SONNTAG,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>SHERIFF OF CARSON CITY; et al.,</p> <p>Defendants - Appellees.</p>
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No. 09-17752

D.C. No. 3:06-cv-00639-RCJ-VPC

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Robert C. Jones, Chief Judge, Presiding

Submitted August 11, 2011**

Before: THOMAS, SILVERMAN, and CLIFTON, Circuit Judges.

Jason Eric Sonntag appeals pro se from the district court’s summary judgment in his 42 U.S.C. § 1983 action alleging violations of the Fourth and Eighth Amendments. We have jurisdiction under 28 U.S.C. § 1291. We review

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

for an abuse of discretion the denial of a motion for default judgment, *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986), and we affirm.

The district court did not abuse its discretion in declining to enter default judgment because defendants were not untimely in their answer to Sonntag's complaint. *See* Fed. R. Civ. P. 4(d)(3) ("A defendant who, before being served with process, timely returns a waiver need not serve an answer to the complaint until 60 days after the request was sent").

We do not consider issues not raised in Sonntag's opening brief. *See Entm't Research Grp., Inc. v. Genesis Creative Grp., Inc.*, 122 F.3d 1211, 1217 (9th Cir. 1997).

AFFIRMED.