

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
CIVIL MINUTES—GENERAL

Case No. **CV 17-7853-AG (KK)**

Date: April 27, 2018

Title: ***Anthony Shawn Woods v. City of Los Angeles, et al.***Present: The Honorable **KENLY KIYA KATO, UNITED STATES MAGISTRATE JUDGE****DEB TAYLOR**

Not Reported

Deputy Clerk

Court Reporter

Attorney(s) Present for Plaintiff(s):

Attorney(s) Present for Defendant(s):

None Present

None Present

**Proceedings: Order to Show Cause Re: Entry of Default**

On December 5, 2017, Plaintiff Anthony Shawn Woods (“Plaintiff”), proceeding pro se and in forma pauperis, constructively filed his First Amended Complaint (“FAC”). ECF Docket No. (“Dkt.”) 13. On January 26, 2018, after screening the FAC, the Court ordered service by the United States Marshal Service (“USMS”) on defendants City of Los Angeles, Los Angeles Police Department, Los Angeles Sanitation Bureau, and Lt. FNU Mathis in his individual and official capacities. Dkts. 17, 18.

On April 12, 2018, defendants City of Los Angeles and Los Angeles Police Department filed an Answer to the FAC. Dkt. 32.

On April 16, 2018, Plaintiff filed a request for entry of default against all defendants. Dkt. 34. Plaintiff’s request was denied because defendants City of Los Angeles and Los Angeles Police Department had filed an Answer and the Court had not yet received the Process Receipt and Return Forms from the USMS regarding the remaining defendants. Dkt. 36.

On April 19, 2018, the Court received Process Receipt and Return Forms for defendants Los Angeles Sanitation Bureau and Lt. Mathis in his individual and official capacities from the USMS certifying that service was executed on the defendants on March 22, 2018 and March 23, 2018 respectively. Dkts. 40, 41, 42. Therefore, a response to the FAC from defendant Los Angeles Sanitation Bureau was due on or before April 12, 2013 and from defendant Lt. Mathis on or before April 13, 2018. See Fed. R. Civ. P. 12(a)(1).

Defendant Los Angeles Sanitation Bureau and Lt. Mathis have failed to respond to the FAC. The failure of a party to defend against an action can be grounds for entry of judgment against that party. Federal Rule of Civil Procedure 55 provides a “two-step process for the entry of judgment against a party who fails to defend: first, the entry of a default, and second, the entry of a default judgment.” City of New York v. Mickalis Pawn Shop, LLC, 645 F.3d 114, 128 (2d Cir. 2011) (internal quotation marks omitted). “The first step, entry of a default, formalizes a judicial recognition that a defendant has, through its failure to defend the action, admitted liability to the plaintiff.” Id. “The second step, entry of a default judgment, converts the defendant’s admission of liability into a final judgment that terminates the litigation and awards the plaintiff any relief to which the court decides it is entitled, to the extent permitted by Rule 54(c).” Id. A defendant’s default does not automatically entitle the plaintiff to a court-ordered judgment. See Draper v. Coombs, 792 F.2d 915, 924-25 (9th Cir. 1986). Rather, granting or denying relief is entirely within the court’s discretion. See id.

Entry of default—the first of these two steps—is governed by Rule 55(a), which provides that “[w]hen 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) (emphasis added).

Accordingly, **on or before May 25, 2018**, Plaintiff is ORDERED to file a request for entry of default or show good cause in writing, if any exists, why Plaintiff has not proceeded to seek an entry of default in this action as to defendants Los Angeles Sanitation Bureau and Lt. Mathis pursuant to Rule 55(a). Plaintiff is forewarned that, if he fails to show cause, request entry of default, or otherwise respond to this Court’s Order, the Court will construe such unresponsiveness as evidence of Plaintiff’s lack of prosecution of this action, and that such lack of prosecution will constitute a basis to dismiss defendants Los Angeles Sanitation Bureau and Lt. Mathis from this action.

Alternatively, Plaintiff may request a voluntarily dismissal of the action against defendants Los Angeles Sanitation Bureau and Lt. Mathis without prejudice pursuant to Federal Rule of Civil Procedure 41(a). The Clerk of Court is directed to mail Plaintiff a blank Notice of Dismissal Form, which the Court encourages Plaintiff to use.

**The Court warns Plaintiff that the Court will deem his failure to timely file a response to this Order as consent to the dismissal of defendants Los Angeles Sanitation Bureau and Lt. Mathis from this action without prejudice.**

**IT IS SO ORDERED.**