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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

HOWARD JOHNSON,)	1:09-cv-00502-OWW-SMS
)	
Plaintiff,	)	ORDER DENYING PLAINTIFF'S MOTION
v.	)	FOR LEAVE TO FILE AN AMENDED
	)	COMPLAINT WITHOUT PREJUDICE (Doc.
MATTHEW CATE, et al .,	)	59)
)	
Defendants.	)	ORDER VACATING HEARING ON
	)	PLAINTIFF'S MOTION AND
	)	APPLICATION FOR DEFAULT JUDGMENT
	)	AND DEEMING MOTION SUBMITTED FOR
	)	DECISION (DOCS. 51, 59)
	)	VACATED HEARING DATE:
	)	August 14, 2009
)	
	)	FINDINGS AND RECOMMENDATION TO
	)	DENY PLAINTIFF'S APPLICATION FOR
	)	DEFAULT JUDGMENT (DOC. 51)

Plaintiff is proceeding with a civil action in this Court. Although Plaintiff presently proceeds with counsel, Plaintiff's counsel's motion to withdraw as attorney of record is presently set to be heard by Judge Oliver W. Wanger on August 3, 2009, at which time a motion to dismiss filed by some defendants is also set to be heard by Judge Wanger. Pending before the undersigned Magistrate Judge is Plaintiff's motion for default judgment, presently set to be heard by the Magistrate Judge on August 14, 2009, at the same time that Plaintiff's more recently filed

1 motion for leave to file an amended complaint is also set to be
2 heard. The matters have been referred to the Magistrate Judge
3 pursuant to 28 U.S.C. § 636(b) and Local Rules 72-302, 72-
4 302(c)(19), and 72-303.

5 Plaintiff's motion for default judgment against Defendant
6 Samantha Dennis was filed on June 11, 2009, along with a
7 declaration in support of the motion and a proposed order. The
8 Court issued an order for supplemental briefing on June 23, 2009.
9 On July 5, 2009, Plaintiff filed a response to the briefing order
10 that was combined with an application for leave to file a second
11 amended complaint, which Plaintiff also appeared to intend to
12 calendar for hearing on August 14, 2009. The response and motion
13 were supported by a declaration from Plaintiff's attorney, Norman
14 Newhouse, with exhibits, including a proposed second amended
15 complaint. In the response, there was no briefing of the issues
16 concerning default judgment that had concerned the Court and had
17 prompted the briefing order, namely, the legal sufficiency of the
18 complaint and resultant notice to warrant the relief requested in
19 the application. Defendants (other than the allegedly defaulting
20 Samantha Dennis) filed opposition to the motion to amend on the
21 grounds that the claims against Dennis did not meet the
22 requirements for permissive joinder and would prejudice the other
23 defendants. No reply has been filed, but the time for the filing
24 of the reply has not yet passed.

25 I. Administrative Denial of Plaintiff's Motion for Leave
26 to Amend

27 A court has inherent power to control its docket and the
28 disposition of its cases with economy of time and effort for both

1 the court and the parties. Landis v. North American Co., 299 U.S.
2 248, 254-255 (1936); Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th
3 Cir. 1992). It is not efficient for the Court to consider
4 dispositive motions when the pleadings on which they are based
5 are not quiet. Further, the assertedly defaulting party is
6 arguably entitled to adequate notice of any amended pleading that
7 significantly changes the relief demanded. Although the motion to
8 dismiss that is to be heard before the District Judge concerns
9 other defendants, the District Judge could, and very likely will,
10 nevertheless address the matter of amendment in the course of
11 considering the motion to dismiss.

12 Accordingly, the Plaintiff's motion for leave to file an
13 amended complaint IS DENIED administratively, and without
14 prejudice to refile a motion for leave to amend subsequent to
15 the District Judge's ruling on the motion to dismiss. Further,
16 the hearing on the motion IS VACATED.

17 II. Vacating the Hearing on the Motion for Default Judgment

18 Pursuant to Rule 78-230(h) of the Local Rules of Practice
19 for the United States District Court, Eastern District of
20 California, the Court finds that the motion of Plaintiff for
21 default judgment is a matter that may appropriately be submitted
22 upon the record and briefs.

23 Accordingly, the hearing on the motion , presently set for
24 August 14, 2009, IS VACATED, and the motion IS DEEMED SUBMITTED
25 to the Court for decision.

26 III. Motion for Default Judgment

27 With respect to the merits of the motion for default
28 judgment, it is established that a default judgment generally

1 bars the defaulting party from disputing the facts alleged in the
2 complaint, but the defaulting party may argue that the facts as
3 alleged do not state a claim. Alan Neuman Productions, Inc. v.
4 Albright, 862 F.2d 1388, 1392. Thus, well pleaded factual
5 allegations, except as to damages, are taken as true; however,
6 necessary facts not contained in the pleadings, and claims which
7 are legally insufficient, are not established by default. Cripps
8 v. Life Ins. Co. of North America, 980 F.2d 1261, 1267 (9th Cir.
9 1992); TeleVideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917
10 (9th Cir. 1987).

11 The Court requested that Plaintiff brief the legal
12 sufficiency of the complaint to entitle Plaintiff to the relief
13 requested in the motion. In the first amended complaint,
14 Plaintiff did not expressly and directly request an order
15 compelling Defendant to execute documentation in order to correct
16 the record of death. Plaintiff did not request a declaratory
17 judgment or relief of a declaratory nature; Plaintiff expressly
18 prayed only for damages. Plaintiff has not briefed the elements
19 of the claims upon which he seeks judgment.

20 Because claims that are legally insufficient are not
21 established by a party's default, a court in considering an
22 application for default judgment must determine whether the
23 claims upon which a plaintiff seeks a default judgment are
24 legally sufficient. An application for a default judgment
25 qualifies as a motion pursuant to Fed. R. Civ. P. 7(b)(1) and
26 Local Rule 1-101(19), and it should include briefs pursuant to
27 Local Rule 78-230(b). Thus, when seeking a default judgment, a
28 plaintiff should provide the Court with points and authorities

1 containing citations to authority showing that the Plaintiff's
2 claim or claims include allegations of all the necessary elements
3 required for entitlement to relief. It is the party's burden to
4 demonstrate to the Court that under the pertinent law, the
5 Plaintiff's claims, as alleged, are legally sufficient. If a
6 party states multiple claims but judgment is sought on only some
7 of them, the party should inform the Court in the application of
8 the claims upon which judgment is sought.

9 Likewise, the applicant should supply the Court with all
10 pertinent and necessary legal authority pursuant to which it is
11 appropriate to enter judgment against a particular party based
12 upon the allegations of the party's status, agency,
13 participation, or other alleged basis for liability of the
14 particular party.

15 In this instance, in response to the Court's briefing order,
16 Plaintiff requested leave to file an amended pleading and
17 appeared to admit candidly that neither Plaintiff's complaint nor
18 the first amended complaint states a cause of action against
19 Samantha Dennis. (Doc. 59, p. 1, ll. 19-23.)

20 Accordingly, the Court concludes that Plaintiff has not
21 established the adequacy of notice to the Defendant, the legal
22 sufficiency of the allegations of the first amended complaint, or
23 the entitlement of the Plaintiff to the relief sought against the
24 allegedly defaulting defendant.

25 IV. Recommendation

26 Therefore, it IS RECOMMENDED that Plaintiff's motion for
27 default judgment against Defendant Smantha Dennis BE DENIED.

28 This report and recommendation is submitted to the United

1 States District Court Judge assigned to the case, pursuant to the
2 provisions of 28 U.S.C. § 636 (b) (1) (B) and Rule 72-304 of the
3 Local Rules of Practice for the United States District Court,
4 Eastern District of California. Within thirty (30) days after
5 being served with a copy, any party may file written objections
6 with the Court and serve a copy on all parties. Such a document
7 should be captioned "Objections to Magistrate Judge's Findings
8 and Recommendations." Replies to the objections shall be served
9 and filed within ten (10) court days (plus three days if served
10 by mail) after service of the objections. The Court will then
11 review the Magistrate Judge's ruling pursuant to 28 U.S.C. § 636
12 (b) (1) (C). The parties are advised that failure to file
13 objections within the specified time may waive the right to
14 appeal the District Court's order. Martinez v. Ylst, 951 F.2d
15 1153 (9th Cir. 1991).

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IT IS SO ORDERED.

Dated: July 17, 2009

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE