

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

LAZARUS ORTEGA,)	
)	CIV. NO. 2: 08-00588 SOM
Plaintiff,)	
)	ORDER DENYING MOTION FOR
vs.)	ENTRY OF DEFAULT
)	
)	
CSP-SAC PRISON OFFICIALS;)	
WALKER, REYES, WILLIAMSON)	
DEASON, HUTCHINGS, COSTA)	
)	
Defendants.)	
_____)	

ORDER DENYING MOTION FOR ENTRY OF DEFAULT

On August 3, 2010, Plaintiff Lazarus Ortega "Ortega" filed a motion asking this court to enter default against Defendant Costa because, according to Ortega, Costa has not filed an answer or otherwise defended himself in this case. This court denies Ortega's motion.

Rule 55 of the Federal Rules of Civil Procedure provides:

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.

Ortega says that Costa and all other Defendants were served with summonses and Ortega's Complaint in November 2009. Because "more than 20 days have elapsed since the date on which [Costa was] served with summons and a copy of Plaintiff's

Complaint," Ortega seeks an entry of default pursuant to Rule 55 of the Federal Rules of Civil Procedure. This court disagrees.

First, Costa was not served with the Complaint in November 2009. Although this court ordered the Marshal to notify Defendants of the case within 10 days of the date of its order (by November 29, 2009), the Marshal did not do so. Indeed, it is unclear when Costa received the Complaint and waiver of service form.

Second, Costa filed an Answer on June 6, 2010. Additionally, Costa is "defending" in this case, as he filed a memorandum with the court stating his reason for failing to effect a waiver of service: he did not receive the waiver form.

This court denies Ortega's motion.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii August 6, 2010



/s/ Susan Oki Mollway
Susan Oki Mollway
Chief United States District Judge

Ortega v. CSP-SAC Prison Officials et al, 08cv588; ORDER DENYING PLAINTIFF'S
MOTION FOR ENTRY OF DEFAULT.