

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

TOMAS L. MENEWEATHER,

No. C 07-04204 SBA (PR)

Plaintiff,

**ORDER DENYING MOTION FOR
DEFAULT JUDGMENT**

v.

B. POWELL, et al.,

Defendants.

Plaintiff, a state prisoner, has filed a pro se complaint under 42 U.S.C. § 1983. On December 23, 2008, Plaintiff filed a motion for default judgment.

Under Rule 55 of the Federal Rules of Civil Procedure, judgment by default may be entered "[w]hen a party against whom affirmative relief is sought has failed to plead or otherwise defend as provided by these rules." Fed. R. Civ. P. 55(a). On the date Plaintiff filed his motion for default judgment, the complaint had not been served on Defendants. At that time, Defendants had not failed to defend this action.¹ Therefore, the facts alleged by Plaintiff in his motion do not entitle him to an entry of default against them.

Accordingly, Plaintiff's request for default judgment is DENIED.

This Order terminates Docket no. 14.

IT IS SO ORDERED.

DATED: 2/11/09


SAUNDRA BROWN ARMSTRONG
United States District Judge

¹ The complaint has since been served on Defendants, and they filed their answer on January 12, 2009.

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 TOMAS L MENEWEATHER,
5
6 Plaintiff,

Case Number: CV07-04204 SBA

7 v.

CERTIFICATE OF SERVICE

8 B POWELL et al,

9 Defendant.

10 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
11 Court, Northern District of California.

12 That on February 12, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said
13 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
14 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
15 located in the Clerk's office.

16 Tomas Lopez Meneweather D35219
17 Salinas Valley State Prison
18 P.O. Box 1050
19 Soledad, CA 93960

20 Dated: February 12, 2009

Richard W. Wieking, Clerk
By: LISA R CLARK, Deputy Clerk

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