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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DAMEIN DION SPRUIELL,  
Plaintiff,  
v.  
R. GRAVES, et al.,  
Defendants.

Case No. [16-cv-05385-DMR](#) (PR)

**ORDER DENYING PLAINTIFF’S  
REQUEST FOR DEFAULT  
JUDGMENT AGAINST  
DEFENDANT NAVARRO**

This matter is presently before the court on Plaintiff’s *pro se* request for a default judgment against Defendant R. Navarro.<sup>1</sup> Dkt. 34. Plaintiff claims that Defendant Navarro has not yet answered his complaint, and thus he is entitled to default judgment. *Id.* at 1-2.

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). Rule 55(b)(2) provides that the court may grant a default judgment after default has been entered by the Clerk of the Court. Fed. R. Civ. P. 55(b)(2). Default judgments are generally disfavored, and “[c]ases should be decided upon their merits whenever reasonably possible.” *Eitel v. McCool*, 782 F.2d 1470, 1472 (9th Cir. 1986).

Here, a default judgment against Defendant Navarro cannot be entered unless there is first a default pursuant to Rule 55(a) of the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 55(b)(2). No such default has been entered against Defendant Navarro. In addition, in a separate

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<sup>1</sup> Plaintiff and the served Defendants have consented to magistrate judge jurisdiction in this matter. Dkt. 1 at 6; Dkt. 32.

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written order, the court has acknowledged that Defendant Navarro remains unserved, and directed the Clerk to reissue service on this Defendant. Accordingly, Plaintiff's request for default judgment against Defendant Navarro is DENIED. Dkt. 34.

This Order terminates Docket No. 34.

IT IS SO ORDERED.

Dated: September 8, 2017



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DONNA M. RYU  
United States Magistrate Judge

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA

3 DAMEIN DION SPRUIELL,  
4 Plaintiff,  
5 v.  
6 R. GRAVES, et al.,  
7 Defendants.  
8

Case No. [4:16-cv-05385-DMR](#)

**CERTIFICATE OF SERVICE**


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

11  
12 That on September 8, 2017, I SERVED a true and correct copy(ies) of the attached, by  
13 placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by  
14 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery  
15 receptacle located in the Clerk's office.  
16

17 Damein Dion Spruiell ID: T-70693  
18 Pelican Bay State Prison  
19 P.O. Box 7500  
20 Crescent City, CA 95531

Dated: September 8, 2017

21  
22 Susan Y. Soong  
23 Clerk, United States District Court

24  
25   
26 By: \_\_\_\_\_  
27 Ivy Lerma Garcia, Deputy Clerk to the  
28 Honorable DONNA M. RYU