

United States District Court
For the Northern District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

E-FILED on 12/16/09

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

HILDA L. SOLIS,¹ Secretary of the United States Department of Labor,

Plaintiff,

v.

MICHAEL D. WILLIAMS, an individual;
POWER & DATA TECHNOLOGY, INC., a California corporation; and POWER & DATA TECHNOLOGY, INC., 401(K) PROFIT SHARING PLAN, an employee pension benefit plan,

Defendants.

No. C-08-5643 RMW

ORDER DENYING DEFENDANT WILLIAMS' MOTION TO VACATE DEFAULT

[Re Docket No. 24]

On August 27, 2009, the Clerk of the Court entered default against defendants Michael D. Williams and defendant Power & Data Technology, Inc. Defendant Williams, proceeding pro se, has moved to vacate default. Plaintiff opposes. Defendant's motion came on for hearing before the court on December 4, 2009. Having considered the papers submitted by the parties and the arguments of plaintiff's counsel and defendant Williams at the hearing, the motion is denied.

Defendant Williams has failed to establish good cause for setting aside default. First, defendant's conduct is culpable – Williams had agreed to waive service, yet declined to execute the

¹ Hilda L. Solis was confirmed as Secretary of Labor on February 24, 2009, and was substituted as Plaintiff in this action.


1 waivers, forcing plaintiff to undertake more extraordinary efforts to serve him, and after he had
2 notice of the action, he still failed to timely respond to the complaint. At the hearing, Williams
3 denied any agreement to waive service, suggesting that he had only agreed to waive service in
4 connection with the parties' discussions relating to a consent judgment. Williams' assertion,
5 however, is not supported by the record. On December 10, 2008, Williams was informed by counsel
6 for plaintiff that plaintiff would be filing suit and in response, Williams asked plaintiff to delay
7 filing the complaint until March 2009 out of a concern that the filing of this action could disrupt
8 Williams' efforts to obtain financial backing and would distract him from other litigation in which
9 he was involved. Nordby Decl. Ex. E and F. Following this exchange of correspondence, plaintiffs'
10 counsel repeatedly sought and obtained Williams' agreement to waive service. Nordby Decl. ¶¶ 11,
11 15. Nevertheless, Williams did not execute the waivers, thus requiring plaintiff to go to various
12 lengths to serve him. Notwithstanding service, Williams failed to timely respond to the complaint.
13 It appears that Williams has been carrying out a manipulative course of conduct to delay facing a
14 financial responsibility that he knows he has. Normally, the court would set aside a default if the
15 motion to set it aside were made as quickly as Williams' motion here. However, if the court were to
16 set aside Williams' default, it would merely further defendant's delaying tactics.

17 Second, Williams' moving papers and his proposed Answer fail to articulate facts supporting
18 a meritorious defense to plaintiff's allegations.

19 Thus, while Williams has moved promptly to set aside the default after default was entered
20 against him, he has failed to establish good cause justifying setting aside default. Accordingly,
21 defendant Williams' motion to set aside default is denied.

22
23
24
25
26
27
28

DATED: 12/16/09 _____



RONALD M. WHYTE
United States District Judge

1 **Notice of this document has been electronically sent to:**

2 **Counsel for Plaintiff:**

3 **Danielle Lee Jaberg**
4 Email: jaberg.danielle@dol.gov

5 **Evan Hansen Nordby**
6 Email: nordby.evan@dol.gov

7 **Lawrence Brewster**
8 Email: brewster.lawrence@dol.gov

9 **A copy of this document has been mailed to:**

10 **Defendant Michael D. Williams:**

11 Michael D. Williams
12 3005 Duval Court
13 Gilroy, CA 95020

14
15 Counsel are responsible for distributing copies of this document to co-counsel that have not
16 registered for e-filing under the court's CM/ECF program.

17
18
19 **Dated:** 12/16/09

TER
Chambers of Judge Whyte

20
21
22
23
24
25
26
27
28