

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Magistrate Judge Boyd N. Boland

Civil Action No. 09-cv-01203-PAB-BNB

KEM KERSHAW,

Plaintiff,

v.

TERRY MAKETA,  
EL PASO COUNTY CRIMINAL JUSTICE CENTER, and  
CORRECTION HEALTH CARE MANAGERS,

Defendants.

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**RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

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This matter arises on the following motions (the “Motions”) filed by the plaintiff:

1. **Demand for Clerk to Enter a Default Judgement . . .** [Doc. #40, filed 08/12/2009];

and

2. **Motion for the Entry of Default and Default Judgement . . .** [Doc. #43, filed 08/17/2009]. I respectfully RECOMMEND that the Motions be DENIED.

The plaintiff seeks entry of default and default judgment against defendants Terry Maketa and the El Paso County Criminal Justice Center. Both defendants were served on June 30, 2009 [Docs. #24 and #25]. Therefore, their answers were due on July 20, 2009. Fed. R. Civ. P. 12(a)(1)(A)(I) (2009 Edition).<sup>1</sup> The defendants filed a joint motion to dismiss on July 20, 2009 [Doc. #29]. Accordingly, the defendants are not in default.

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<sup>1</sup>Rule 12 of the 2009 Revised Edition of the Federal Rules of Civil Procedure does not take effect until December 1, 2009. Fed. R. Civ. P. 12, “2009 Amendments,” (2009 Revised Edition).

I respectfully RECOMMEND that the Motions be DENIED.

FURTHER, IT IS ORDERED that pursuant to 28 U.S.C. § 636(b)(1)(C) and Fed.R.Civ.P. 72(b), the parties have 10 days after service of this recommendation to serve and file specific, written objections. A party's failure to serve and file specific, written objections waives *de novo* review of the recommendation by the district judge, Fed.R.Civ.P. 72(b); Thomas v. Arn, 474 U.S. 140, 147-48 (1985), and also waives appellate review of both factual and legal questions. In re Key Energy Resources Inc., 230 F.3d 1197, 1199-1200 (10<sup>th</sup> Cir. 2000). A party's objections to this recommendation must be both timely and specific to preserve an issue for *de novo* review by the district court or for appellate review. United States v. One Parcel of Real Property, 73 F.3d 1057, 1060 (10<sup>th</sup> Cir. 1996).

Dated September 4, 2009.

BY THE COURT:

s/ Boyd N. Boland  
United States Magistrate Judge