

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-02328-WYD-KLM

WELLMAN GIBSON,

Plaintiff,

v.

CAPT. MATOYER, Supervisor,
CO LOPEZ, DOC OFFICER, Security,
MAJOR MARTINEZ, AVCF Programs Manager,
KIM BEICKER, Manager, Faith and Citizen Programs
ARISTEDES W. ZAVARAS, Executive Director DOC.,
SGT. VERENA PACHECO, Kitchen Staff, and
STEVE HARTLEY, Warden AVCF,

Defendant(s).

ORDER

ENTERED BY MAGISTRATE JUDGE KRISTEN L. MIX

This matter is before the Court on Plaintiff's **Notice to the Clerk, Entry of Default** [Docket No. 57; Filed January 26, 2010] and **(Motion for Default Judgment by Plaintiff)** [Docket No. 60; Filed January 27, 2010] (the "Motions").

IT IS HEREBY **ORDERED** that the Motions are **DENIED**. Pursuant to Fed. R. Civ. P. 55(a), the Clerk must enter default "[w]hen a party ... has failed to plead or otherwise defend ..." Contrary to Plaintiff's contention, Defendants are not subject to default. Defendants filed a Motion to Dismiss or, in the Alternative, Motion for Summary Judgment [Docket No. 54] on January 19, 2010. Therefore, default has not occurred and Plaintiff's Motions lack merit.

Dated: January 28, 2010

BY THE COURT:

_____/s/ Kristen L. Mix_____
Kristen L. Mix
United States Magistrate Judge