

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
ALBANY DIVISION

TRAVIS SMITH,

Plaintiff

VS.

CORPORAL LEBLANC, *et al.*,

Defendants

NO. 1:07-CV-124 (WLS)

**PROCEEDINGS UNDER 42 U.S.C. §1983  
BEFORE THE U. S. MAGISTRATE JUDGE**

**RECOMMENDATION**

Plaintiff has filed a MOTION FOR DEFAULT JUDGMENT against the defendants herein, apparently based on the defendants' alleged failure to respond to discovery requests. Tab #24. The entry of default or default judgment, however, is not the proper remedy for a party's alleged failure to respond to discovery requests. Rule 55(a) of the Federal Rules of Civil Procedure provides for the entry of default only "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise". The defendants filed an Answer to plaintiff's complaint on April 8, 2008. Tab #18.

Accordingly, it is the recommendation of the undersigned that the plaintiff's MOTION FOR DEFAULT JUDGMENT be **DENIED**. Pursuant to 28 U.S.C. § 636 (b)(1), the parties may file written objections to this recommendation with the Honorable W. Louis Sands, United States District Judge, **WITHIN TEN (10) DAYS** of receipt thereof.

**SO RECOMMENDED**, this 18<sup>th</sup> day of NOVEMBER, 2009.



A handwritten signature in black ink that reads "Claude W. Hicks, Jr." The signature is fluid and cursive, with "Claude" and "W." being more formal and "Hicks" and "Jr." being more casual.

CLAUDE W. HICKS, JR.  
UNITED STATES MAGISTRATE JUDGE