



Plaintiff alleges that Defendant Darwin Ching ("Defendant") has failed to respond to Plaintiff's First Verified Amended Complaint, filed on May 7, 2009. However, the docket indicates that Defendant filed a motion to dismiss Plaintiff's Amended Complaint on May 26, 2009. Said motion is set for hearing before the district court on August 10, 2009. Moreover, as the Court has repeatedly instructed, an entry of default must precede a motion for default judgment and the record before the Court indicates that the clerk has not entered default. See Fed. R. Civ. P. 55(a) ("When 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 clerk must enter the party's default."). Until the clerk enters default,<sup>2</sup> the Court shall not entertain any motions for default judgment.

Accordingly, the Court FINDS and RECOMMENDS that Plaintiff's Motion be DENIED without prejudice. The Court further RECOMMENDS that the district court

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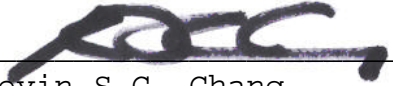
<sup>2</sup> At present, the entry of default is unlikely given that Defendant has responded to Plaintiff's Amended Complaint.

instruct Plaintiff to refrain from filing additional motions for default judgment until he complies with the applicable rules and that any further motions for default judgment filed by Plaintiff not preceded by an entry of default be stricken from the record.

IT IS SO FOUND AND RECOMMENDED.

Dated: Honolulu, Hawaii, June 25, 2009.



  
Kevin S.C. Chang  
United States Magistrate Judge

CV08-00537 SOM-KSC; LARSON V. CHING; FINDINGS AND RECOMMENDATION TO DENY  
WITHOUT PREJUDICE PLAINTIFF'S SECOND MOTION FOR DEFAULT