

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

D'ANDRE ALEXANDER
731077,

Plaintiff

Case No. 2:16-CV-13293
District Judge Mark A. Goldsmith
Magistrate Judge Anthony P. Patti

v.

NICHOLAS CALZETTA, FRED
GOVERN, ERICA HUSS,
DARRIN VIITALA, MANDI
SALMI, KENNETH NIEMISTO,
KRISTINE GIESEN, TERRY
MEDEN, CHAD LaCOUNT,
HANNA SAAD, DR. ROSEN, C/O
WATKINS, C/O LEWIS, C/O LEE,
C/O SLAUGHTER, C/O
HOUSTON, DAPHNE M.
JOHNSON and RICHARD
IDEMUDIA,

Defendants.

**ORDER DENYING PLAINTIFF'S OBJECTION TO DEFENDANT
ROSEN'S ANSWER TO COMPLAINT/MOTION FOR DEFAULT
JUDGMENT (DE163)**

This matter is before the Court for consideration of Plaintiff's objection to Defendant Rosen's answer to complaint/motion for default judgment (DE 163) and Defendant Derek Rosen's response (DE 164).

On October 17, 2018, the Court entered an Order requiring Defendant Rosen to show cause on or before October 29, 2018 for his failure to plead, respond or

file a motion in response to the complaint. (DE 156.) On October 24, 2018, Defendant Rosen filed a response to the Court's show cause order, explaining that pursuant to the Prison Litigation Reform Act, 42 U.S.C. § 1997e(g)(1), he is not required to "reply to any action brought by a prisoner" unless the court orders a reply pursuant to 42 U.S.C. § 1997e(g)(2). (DE 157.) On October 25, 2018, the Court entered an order vacating the order to show cause for good cause shown and ordering Defendant Rosen to either file an answer or other response to Plaintiff's complaint or file a joinder in one or more of the pending dispositive motions, by November 5, 2018. (Text-Only Order dated 10/25/18.) On November 5, 2018, Defendant Rosen filed his answer with affirmative defenses to Plaintiff's complaint. (DE 159.) Accordingly, contrary to Plaintiff's objection, Defendant Rosen timely responded to the Court's show cause order and timely filed an answer to Plaintiff's complaint, and Plaintiff's objection to Defendant Rosen's answer is therefore **DENIED**.

Further, on November 13, 2018, Plaintiff filed a request for clerk's entry of default as to Defendant Rosen "for failure to plead or otherwise defend" this case. (DE 161.) On November 14, 2018, the Court Clerk filed a notice of denial of entry of default as to Defendant Rosen because his answer was timely filed on November 5, 2018. (DE 162.) Accordingly, having failed to obtain a Clerk's entry of default under Fed. R. Civ. P. 55(a), the Court may not consider a motion

for default judgment under Rule 55(b)(2). *See Devlin v. Kalm*, 493 F. App'x 678, 685-86 (6th Cir. 2012) (“[I]t was procedurally improper for Plaintiff to move for entry of default judgment without first obtaining an entry of default from the clerk.”) (collecting cases). Accordingly, Plaintiff’s motion for default judgment against Defendant Rosen is **DENIED**.

IT IS SO ORDERED.

Dated: November 29, 2018

s/*Anthony P. Patti*
Anthony P. Patti
UNITED STATES MAGISTRATE JUDGE

Certificate of Service

I hereby certify that a copy of the foregoing document was sent to parties of record on November 29, 2018, electronically and/or by U.S. Mail.

s/Michael Williams
Case Manager for the
Honorable Anthony P. Patti