

1 motion for clerk’s default.

2 **DISCUSSION**

3 Obtaining a default judgment is a two-step process governed by the Federal Rules of Civil
4 Procedure. *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir.1986). First, “[w]hen a party against
5 whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that
6 failure is shown by affidavit or otherwise, the clerk must enter the party’s default.” Fed. R. Civ. P.
7 55(a). Second, after the clerk enters default, a party must seek entry of default judgment under
8 Rule 55(b). The choice of whether to enter a default judgment lies within the discretion of the
9 court. *Aldabe v. Aldabe*, 616 F.3d 1089, 1092 (9th Cir.1980). The Ninth Circuit has identified
10 several relevant factors in determining whether to grant default judgment including: (1) the
11 possibility of prejudice to plaintiff, (2) the merits of the claims, (3) the sufficiency of the complaint,
12 (4) the amount of money at stake, (5) the possibility of a dispute concerning material facts, (6)
13 whether default was due to excusable neglect, and (7) the policy favoring a decision on the merits.
14 *Eitel*, 782 F.2d at 1471–72.

15 Rule 55(a) requires the entry of clerk’s default “[w]hen a party against whom a judgment
16 for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by
17 affidavit or otherwise.” However, a prerequisite to entering default is finding that the defendant
18 has been properly served. Here, Montoya has failed to show that Defendant was properly served.
19 Additionally, a default judgment may be entered against an United States agency “only if the
20 claimant establishes a claim or right to relief by evidence that satisfies the court.” Fed. R. Civ. P.
21 55(d). The Courts review of Montoya’s Complaint reveals several issues including whether she
22 can state a claim for herself and for Laurie Wainwright. Accordingly, the Courts finds that ordering
23 the clerk to enter default is not warranted at this time and will deny Montoya’s motion without
24 prejudice.

25 Federal Rule of Civil Procedure 4(i) requires a plaintiff to deliver a copy of the summons
26 and complaint to “the United States attorney for the district where the action is brought - or an
27 assistant United States attorney or clerical employee whom the United States attorney designates in
28 a writing filed with the court clerk - or send a copy of each by registered or certified mail to the

1 civil-process clerk at the United States attorney’s office.” Fed. R. Civ. P. 4(i)(1)(A)(i)-(ii).
2 Additionally, a plaintiff must also send a copy of the summons and complaint to the Attorney
3 General of the United States at Washington D.C. and by registered or certified mail to the Social
4 Security Administration. See Fed. R. Civ. P. 4(i)(B)-(C). Acceptable proof of service is provided
5 by the server’s affidavit. See Fed. R. Civ. P. 4(l)(1). Plaintiff failed to submit an affidavit proving
6 that service was accomplished on the United States Attorney for the District of Nevada.
7 Furthermore, she provided mail receipts for the Office of the Regional Chief Counsel and Attorney
8 General, but not for the United States Attorney for the District of Nevada. Accordingly, the Court
9 finds that Montoya has failed to properly serve Defendant.

10 The Court notes that Plaintiff is proceeding *pro se*. “In civil cases where the plaintiff
11 appears *pro se*, the court must construe the pleadings liberally and must afford plaintiff the benefit
12 of any doubt.” *Karim–Panahi v. Los Angeles Police Dep’t*, 839 F.2d 621, 623 (9th Cir.1988); see
13 also *Haines v. Kerner*, 404 U.S. 519, 520–21 (1972). Accordingly, under Rule 4(i) the Court will
14 grant Plaintiff a reasonable time of thirty (30) days to cure her failure to serve the United States
15 Attorney for the District of Nevada. Fed. R. Civ. P. 4(i)(4).

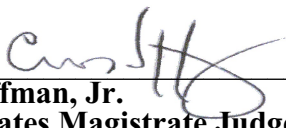
16 Based on the foregoing and good cause appearing therefore,

17 **ORDER**

18 **IT IS HEREBY ORDERED** that Plaintiff Debbie Montoya’s Motion for Clerk’s Default
19 (#7) is **denied without prejudice**.

20 **IT IS FURTHER ORDERED** Plaintiff Debbie Montoya shall have until March 3, 2014 to
21 accomplish service on Defendant and provide the Court will acceptable proof of service pursuant to
22 Federal Rule of Civil Procedure 4(l).

23 DATED this 30th day of January, 2014.

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27 **C.W. Hoffman, Jr.**
United States Magistrate Judge