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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

JAMES TRACEY CORGAN, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 NEVADA DEPARTMENT OF PUBLIC )  
 SAFETY INVESTIGATION DIVISION, et al., )  
 )  
 Defendants. )

3:14-cv-00692-RCJ-WGC

**ORDER**  
**re: Doc # 34**

Before the court is the “Defendant Paige’s Motion to Set Aside Default Filed March 27, 2015 Based Upon Good Cause/Answer.” (Doc. # 34.<sup>1</sup>) Defendant Bryan Lee Paige, a pro se prisoner inmate, seeks an order of the court setting aside the Clerk’s Entry of Default (Doc. # 27) as against him. No response to the motion was filed.

The defendant is an inmate in the Nevada Department of Corrections (NDOC). Plaintiff’s service was made on defendant Paige by delivering a copy of the summons and complaint upon defendant’s caseworker. (Doc. # 24). Helpful to understanding Defendant’s motion is the sequence of events relating to service of process.

**TIMELINE CONCERNING ENTRY OF DEFAULT**

The following outlines the events as they appear on the docket:

3/6/15: Defendant Paige’s 2/27/15 letter to the Clerk (Doc. # 20) is filed. Paige states he received various documents delivered to him by his caseworker and wanted to ascertain if the Clerk’s records reflected service was completed and a return of service filed. His letter was dated 2/27/15, but was not received in the Clerk’s office until 3/6/15, a Friday.

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<sup>1</sup> Refers to court’s docket number.

- 1 3/9/15: Minute Order (Doc. # 21) ordering counsel for Plaintiff to serve the return of service (#18)  
2 on defendant Paige. A copy of this order was not sent to Defendant Paige as he had not yet  
3 3/17/15: Plaintiff's attorney files a certificate of service and notice of compliance with the court's  
4 3/9/15 order. (Doc. # 23). The notice reflects the summons and complaint "was physically  
5 served upon BRYAN PAIGE on February 23, 2015 by a prison caseworker who agreed to  
6 receive and serve the same." (*Id*). Attorney Corn simultaneously files a 3-Day Notice of  
7 Intent to Enter Default (Doc. # 24).
- 6 3/26/15: Plaintiff files a Request for Clerk to Enter Default as against Defendant Paige. (Doc. # 26.)
- 7 3/27/15: Clerk enters Default as to Defendant Paige. (Doc. # 27).
- 8 4/2/15: Defendant Paige files Answer to Complaint. (Doc. # 29). His answer is dated 3/30/15 and  
9 served the same day. Selected exhibits which were referred to in footnote 1 appearing on  
10 page 1, include:
- 11 A: Envelope from attorney Corn addressed Paige which was received by Paige on 2/24/15,  
12 with enclosed document entitled "Summons Returned Executed" which reflects the case  
13 worker received service on behalf of plaintiff on 2/23/14.
- 14 B. Paige's letter to the Clerk dated 2/27/15. (Doc. # 20.)
- 15 C. Envelope from Attorney Corn's mailed to Lovelock Correctional Center, "Attn: Jeri  
16 Lynn" postmarked 1/28/15; There is a note on the envelope that Defendant Paige  
17 received same "from Caseworker in Unit 5A-SLP" on 2/26/15.

#### 15 DISCUSSION

16 Fed. R. Civ. P. 4(e) provides, in pertinent part, as follows:

17 **(e) Serving an Individual Within a Judicial District of the United States.** Unless  
18 federal law provides otherwise, an individual...may be served in a judicial district of the  
19 United States by:

19 (1) following state law for serving a summons in an action brought in courts of general  
20 jurisdiction in the state where the district court is located or where service is made; or

21 \* \* \*

21 (2) doing any of the following:

22 (A) delivering a copy of the summons and of the complaint to the individual  
23 **personally;**

24 (B) leaving a copy of each at the individual's dwelling or usual place of  
25 abode with someone of suitable age and discretion who **resides** there, or

26 (C) delivering a copy of each to an **agent authorized by appointment or  
27 by law to receive service of process.**

28 (emphasis added.)

1 Plaintiff's service of process on Defendant Paige is potentially defective in that under either state  
2 or federal procedures, it was not *personally* delivered to the Defendant. There is also an issue whether  
3 the summons was left with someone of suitable age who **resides** at Defendant Paige's abode because  
4 the NDOC caseworker may not have been an agent authorized by appointment or by law to receive  
5 service of process. Because Plaintiff has not opposed the motion, Plaintiff makes no argument in this  
6 regard as to whether service on an NDOC caseworker satisfies either Fed. R. Civ. P. 4(e)(2) or Nev. R.  
7 Civ. P. 4, the provisions in which essentially parallel Federal Rule 4.

8 Fed. R. Civ. P. 55 (c) provides that a default may be set aside for good cause. The preference  
9 of federal jurisprudence is to have cases tried on their merits. *U.S. v Signed Personal Check No. 730 of*  
10 *Yuban S. Mesle*, 615 F. 2d 1085, 1091 (9th Cir. 2010). Defendant has answered the complaint and sets  
11 forth various defenses. (Doc. # 29). Coupled with the questionable service on Defendant's caseworker,  
12 the court finds there is good cause to set aside the default as to Defendant Paige.

13 Additionally, Local Rule 7-2(d) provides that the failure of an opposing party to file points and  
14 authorities in response to any motion shall constitute a consent to the granting of the motion. As noted  
15 above, Plaintiff has not opposed Defendant's motion.

16 Defendant's motion to set aside the default (Doc. # 34) is **GRANTED**.

17 **IT IS SO ORDERED.**

18 DATED: May 19, 2015.

19   
20 WILLIAM G. COBB  
21 UNITED STATES MAGISTRATE JUDGE  
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