IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,	**:**	
Plaintiff,	**:**	**Case No. 2:08-cv-897**
v.	**:**	**Judge Holschuh**
ROXIE WIGGINS,	**:**	**Magistrate Judge King**
Defendant.	**:**	
	:	

MEMORANDUM OPINION & ORDER

On September 22, 2008, the United States filed suit against Roxie Wiggins, who had defaulted on her student loans. Count 1 of the Complaint sought $2794.73 in principal and $3535.94 in interest owed on one promissory note. Count 2 of the Complaint sought $938.24 in principal and $1088.29 in interest owed on another promissory note. On November 6, 2008, Wiggins waived service of summons.

No answer was filed. However, on December 7, 2008, Wiggins entered into a Stipulation for Entry of Consent Judgment. In that document, signed by the Assistant United States Attorney on December 12, 2008 and filed with the Court on December 16, 2008, the parties stipulated that "Defendant is indebted to Plaintiff in the amount of $6330.67, plus additional accrued interest after July 16, 2008." (Stip. ¶ 2). In accordance with that Stipulation, judgment was entered on December 16, 2008 in favor of the United States and against Wiggins in the amount of $6330.67 plus interest.

The United States recently discovered that, due to a clerical error, the Stipulation included only the balance owed on the promissory note described in Count 1 of the Complaint. It inadvertently omitted the balance owed on the promissory note described in Count 2 of the

Complaint. In an attempt to rectify this mistake, on April 26, 2010, the United States moved for entry of default "for failure to plead or otherwise defend Count 2 of the Complaint." (Mot. for Entry of Default). The Clerk entered default on April 27, 2010. The United States then moved for default judgment as to Count 2 in the amount of $938.24 in principal and $1088.29 in interest through July 15, 2008.

The Court denies the United States' Motion for Default Judgment and vacates the Entry of Default. Federal Rule of Civil Procedure 55(a) provides that "[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 clerk must enter the party's default." Here, it is undisputed that Wiggins failed to plead; no answer was filed. However, it cannot be said that she failed to "otherwise defend." Shortly after signing the Waiver of Service of Summons, she entered into a Stipulation for Entry of Consent Judgment, admitting that she owed the United States $6330.67 plus interest and agreeing to make monthly payments "until the entire judgment debt has been paid in full." (Stip. for Entry of Consent Judg. ¶¶ 2,5).

The United States' inadvertent failure to include the amounts owed under *both* promissory notes in the Stipulation for Entry of Consent Judgment does not equate to a failure on Wiggins' part to "otherwise defend" as to Count 2. This is not a case in which she failed to take any affirmative action in response to the Complaint or failed to comply with a court order. Rather, upon receiving the Complaint, she readily agreed that she owed the United States $6330.67 and would make monthly payments until that amount was paid in full. Pursuant to the terms of the Stipulation, final judgment was entered and the case was terminated.

In the Court's view, under these circumstances, the Entry of Default was improvidently made. It would be grossly unfair to now reopen the case and to penalize Wiggins for the Government's clerical error. Therefore, pursuant to Federal Rule of Civil Procedure 55(c), the Court **VACATES** the Clerk's April 27, 2010 Entry of Default (Doc. 7) and **DENIES** the United States' Motion for Default Judgment as to Count 2 of the Complaint (Doc. 8).

IT IS SO ORDERED.

Date: May 10, 2010

/s/ John D. Holschuh
John D. Holschuh, Judge
United States District Court