

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

JAMES L. HILL,)	
)	
Plaintiff,)	
)	
vs.)	Case No. CIV-07-404-M
)	
DETENTION OFFICER TRUELOVE;)	
SERGEANT SANCHEZ;)	
CORPORAL STREETER; and)	
DETENTION OFFICER RUSSEL,)	
)	
Defendants.)	

ORDER

Before the Court is plaintiff's Motion for Entry of Default & Default Judgment, filed October 19, 2009. On November 6, 2009, defendants filed their response, and on December 1, 2009, plaintiff filed his reply. Based upon the parties' submissions, the Court makes its determination.

I. Background

On April 5, 2007, plaintiff filed the instant action. On April 9, 2007, this case was referred to United States Magistrate Judge Valerie K. Couch. On June 8, 2007, Magistrate Judge Couch issued an order requiring defendants to file a Special Report and their answers and/or dispositive motion(s) no later than sixty (60) days from the date of service of process. On July 30, 2007, plaintiff filed an Amended Complaint.

On November 5, 2007, defendants filed a motion to dismiss. On July 30, 2008, Magistrate Judge Couch issued a Report and Recommendation, recommending that defendants' motion to dismiss be granted as to plaintiff's conspiracy claims brought pursuant to 42 U.S.C. § 1985(3), as to any claims lodged against defendants in their official capacities, and as to plaintiff's claims based on state and federal criminal statutes and be denied as to all other issues raised by defendants. On

September 23, 2008, this Court adopted the Report and Recommendation and re-referred this matter to Magistrate Judge Couch.

On October 7, 2008, Magistrate Judge Couch issued an order setting a dispositive motion deadline and a discovery deadline in this case. On January 7, 2009, defendants filed a motion for summary judgment. On September 16, 2009, Magistrate Judge Couch issued a Report and Recommendation, recommending that defendants' motion for summary judgment be denied. On November 13, 2009, this Court adopted the Report and Recommendation and denied defendants' motion for summary judgment. Finally, a review of the case file reveals that defendants have never filed an answer in this case.

II. Discussion

Plaintiff moves this Court to enter default and default judgment against defendants because they have failed to answer within ten (10) days after the Court denied their motion to dismiss.¹

The preferred disposition of any case is upon its merits and not by default judgment. However, this judicial preference is counterbalanced by considerations of social goals, justice and expediency, a weighing process which lies largely within the domain of the trial judge's discretion.

Gomes v. Williams, 420 F.2d 1364, 1366 (10th Cir. 1970) (internal citation omitted).

While defendants are technically in default because they have never filed an answer in this case, the Court finds in light of the procedural posture of this case, and particularly defendants' active participation in this case through filing a motion to dismiss, a motion for summary judgment, and various responses to plaintiff's motions, it would not be appropriate to enter default and default

¹Plaintiff also moves for default judgment against defendants Sanchez and Truelove based upon their failure to timely file their motion to dismiss. Plaintiff previously moved for default judgment on this same basis, which this Court denied on September 23, 2008. *See* docket no. 95.

judgment against defendants. The Court finds that the ends of justice in this case would only be met if this case were decided on its merits. The Court, however, does find that defendants should be required to file answers in this case.

III. Conclusion

Accordingly, the Court DENIES plaintiff's Motion for Entry of Default & Default Judgment [docket no. 135] and ORDERS defendants to file their answers in this case on or before January 27, 2010.

IT IS SO ORDERED this 6th day of January, 2010.


VICKI MILES-LAGRANGE
CHIEF UNITED STATES DISTRICT JUDGE