

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

YSIDRO VALENCIA §
VS. § CIVIL ACTION NO. 9:13-CV-43
BRAD LIVINGSTON, *et al.*, §

**MEMORANDUM OPINION AND ORDER DENYING PLAINTIFF'S APPEAL OF
MAGISTRATE JUDGE'S ORDER**

Plaintiff, Ysidro Valencia, a state prisoner currently confined at the Gib Lewis Unit with the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se* and *in forma pauperis*, filed this civil rights action pursuant to 42 U.S.C. § 1983.

On February 27, 2014, the Magistrate Judge to whom this case was referred entered an order denying plaintiff's motion for entry of default judgment as premature. Plaintiff, by way of two motions, requests an appeal of this order. *See* docket entry nos. 66 & 72.

Analysis

In accordance with 28 U.S.C. § 636(b)(1)(A) and Federal Rule of Civil Procedure 72, a judge of the court may reconsider any pretrial matter referred to a magistrate judge under subparagraph (A) where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law.

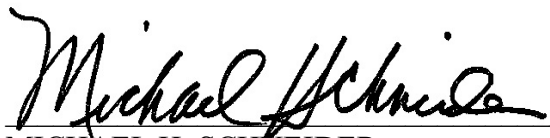
Having examined the allegations in plaintiff's appeal of the Magistrate Judge's order, this Court finds no support for plaintiff's objections. In the February 27, 2014 order, the Magistrate

Judge explained that the prior order to answer was not properly served on the defendants.¹ In the order denying plaintiff's motion for entry of default judgment as premature, the Magistrate Judge also ordered that the Clerk of Court should electronically serve the order to answer along with the complaint and attachments. The Texas Attorney General received the order electronically on February 27, 2014 and Motions to Dismiss were properly filed on March 28, 2014 and March 31, 2014. There was no default as defendants were not properly served with the order to answer until February 27, 2014.

The Court finds the order of the Magistrate Judge neither clearly erroneous or contrary to law. According, plaintiff's appeal of the Magistrate Judge's order should be denied. It is, therefore,

ORDERED that plaintiff's objections are **OVERRULED** and plaintiff's appeal of the Magistrate Judge's order is **DISMISSED**.

SIGNED this 17th day of February, 2015.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE

¹A review of the docket sheet revealed that the Order to Answer entered on September 3, 2013 was not electronically served on the Texas Attorney General as originally ordered.