

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

<p>JEROME CEASAR ALVERTO,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>DEPARTMENT OF CORRECTIONS, C/O FINCH, C/O PERCIFIELD, C/O GRIJALVA, SGT. C. ROOP, HERBERT C. PENROSE, MICHAEL ESTES, KRISTI ENTROP, DR. JUGUILON, STEPHEN SINCLAIR, RAYMOND BUCHMANN, C/O ADAMIRE, RON FRAKER, ROB JACKSON, COUNSELOR WALKER, KURT GRUBB, C/O DELEON, C/O PALMER, JASON ROMERO, ADELE WILLIAMS, BRYAN MCGARVIE, DARREN HEAWARD, DENISE LARSON, LT. TOM TABER, JASON ULRICH, and STATE OF WASHINGTON,</p> <p style="text-align: center;">Defendants.</p>
--

No. C11-5572 RJB/KLS

ORDER DENYING MOTIONS FOR  
ENTRY OF DEFAULT

Plaintiff has filed two motions for the entry of a default judgment against Defendants. ECF Nos. 28 and 45. Plaintiff contends that Defendants have failed to answer or otherwise defend the summons and complaint within thirty-five days and are therefore, in default. Plaintiff is incorrect and his motions are denied.

**DISCUSSION**

Rule 55, which governs the entry of default, provides for the entry of default when a party fails to plead or otherwise defend. Fed. R. Civ. P. 55. An individual, corporation, or association that is subject to service under Rule 4(e), (f), or (h) has a duty to avoid unnecessary

1 expenses of serving the summons. Fed. R. Civ. P. 4(d)(1). The plaintiff may notify such a  
2 defendant that an action has been commenced and request that the defendant waive service of a  
3 summons. *Id.* If a plaintiff is authorized to proceed *in forma pauperis*, service is to be carried  
4 out by a United States marshal, deputy marshal or by a person specially appointed by the court.  
5 Fed. R. Civ. P. 4(c)(3). A defendant who waives service of process and files a waiver has **sixty**  
6 days after the request to file an answer. Fed. R. Civ. P. 4(d)(3) (emphasis added).  
7

8 In this matter, 23 of the individual defendants returned waivers of service to the Court on  
9 September 14, 2011. *See* Dkt. 15, 18, 19, 20, 21, 22, 23, 25, 26, 27, 29, 30, 31, 32, 33, 34, 35,  
10 36, 37, 38, 39, 40 and 41. Defendants assert that their response to Plaintiff's motion for default  
11 should be deemed as an acceptance of waiver of service as to Defendants State of Washington,  
12 Juguilon, and Percifeld. ECF No. 43.

13 Based on the record, therefore, Defendants have sixty days from September 14, 2011, or  
14 November 14, 2011, to file their answer. Plaintiff's requests for default (ECF Nos. 28 and 45)  
15 are premature and are **DENIED**.  
16

17  
18 **DATED** this 4th day of November, 2011.

19  
20   
21 Karen L. Strombom  
22 United States Magistrate Judge  
23  
24  
25  
26