

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

LUIS A. RAMIREZ,

Plaintiff,

v.

ANTHONY MELI, MARC CLEMENTS,
TOD RUSSEL, STEVEN SCHUELER,
CURT JANSSEN, BRET MIERZEJEWSKI,
MICHAEL GLAMANN and BRIAN PASSIG,

Defendants.

MEMORANDUM

04-C-0786-C

Plaintiff has filed documents titled “Motion for Default Judgment,” which I construe as a motion for entry of default pursuant to Fed. R. Civ. P. 55(a), and “Motion for Oral Argument,” which I construe as a sur-reply in opposition to defendants’ motion to dismiss. Plaintiff’s motion for entry of default will be denied, but I will accept plaintiff’s sur-reply for consideration in connection with the motion to dismiss.

In his motion for entry of default, which is dated April 1, 2005, plaintiff contends that defendant Glamann should be found in default because he has failed to respond to plaintiff’s complaint.

Fed. R. Civ. P. 55(a) states:

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default.

The court's record reveals that on April 4, 2005, defendant Glamann, who was served with plaintiff's complaint considerably later than the other defendants, moved on April 4, 2005 to dismiss plaintiff's complaint for the reasons expressed in the motion to dismiss filed by the other defendants. Because defendant Glamann has not failed to plead or otherwise defend this lawsuit, there is no basis for granting plaintiff's motion for entry of default.

With respect to plaintiff's request for leave to file a sur-reply, I note that defendants filed their reply in support of their motion to dismiss on April 4, 2005. The motion was accompanied by copies of records of plaintiff's administrative exhaustion. In his sur-reply, plaintiff challenges the authenticity of the records, pointing out certain discrepancies in their appearance. In deciding the motion to dismiss, I will review plaintiff's concerns and give them whatever weight they deserve in deciding the motion to dismiss.

ORDER

IT IS ORDERED that plaintiff's motion for entry of default pursuant to Fed. R. Civ. P. 55(a) is DENIED.

Further, IT IS ORDERED that plaintiff's "Motion for Oral Argument" is accepted as a sur-reply in opposition to the motion to dismiss.

Entered this 8th day of April, 2005.

BY THE COURT:

BARBARA B. CRABB
District Judge