

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF  
CALIFORNIA

Simon v. Cumba

Simon · No. 3:25-CV-00107-CAB-MSB · Decided February 24, 2025

SUMMARY

The United States District Court for the Southern District of California denies Plaintiff Phillip W. Simon’s request for entry of default judgment against Defendant Deborah A. Cumba. The court concludes that Defendant timely filed a motion to dismiss and thereby raised a defense under Federal Rule of Civil Procedure 55(a).

CASE DETAILS

|                       |                                                                                                                         |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States District Court for the Southern District of California                                                    |
| WRITING FOR THE COURT | Cathy Ann Bencivengo                                                                                                    |
| JURISDICTION          | United States District Court for the Southern District of California                                                    |
| DECIDED               | February 24, 2025                                                                                                       |
| DOCKET                | 3:25-CV-00107-CAB-MSB                                                                                                   |
| DISPOSITION           | denied                                                                                                                  |
| PROCEDURAL POSTURE    | Plaintiff requested entry of default judgment against Defendant while Defendant had a pending timely motion to dismiss. |
| PRECEDENTIAL VALUE    | Unpublished district court order                                                                                        |

TOPICS

- default judgment
- default
- motions to dismiss
- civil procedure

PRACTICE AREAS

- civil procedure
- default judgment

QUESTIONS PRESENTED

1. Whether a plaintiff may obtain entry of default judgment when the defendant has timely filed a motion to dismiss.

HOLDINGS

1. A defendant's timely motion to dismiss constitutes an effort to otherwise defend the lawsuit and therefore precludes entry of default under Federal Rule of Civil Procedure 55(a).

#### FACTUAL BACKGROUND

Plaintiff sought entry of default judgment against Defendant. Before the request was resolved, Defendant filed a timely motion to dismiss the complaint on February 13, 2025. The court determined that Defendant had clearly raised a defense before the court.

#### PROCEDURAL HISTORY

Plaintiff filed a request for entry of default judgment. Defendant filed a timely motion to dismiss the complaint on February 13, 2025. The district court denied Plaintiff's request because the motion to dismiss constituted a defense under Federal Rule of Civil Procedure 55(a).

#### DISPOSITION

denied

#### CASES CITED

- Song v. Deeds, 947 F.2d 951 (9th Cir. 1991)

#### OPINION

Simon v. Cumba

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10

11 PHILLIP W. SIMON, Case No. 3:25-CV-00107-CAB-MSB

12 Plaintiff,

ORDER DISMISSING REQUEST

13 v. FOR ENTRY OF DEFAULT

14 DEBORAH A. CUMBA, [Doc. No. 13] 15 Defendant, 16 17 18 Plaintiff has filed a request for entry of default judgment against Defendant. [Doc. 19 No. 13.] But Defendant filed a timely motion to dismiss the complaint on Feb. 13, 2025. 20 [Doc. No. 10.] Defendant has clearly raised a defense before this Court. Fed. R. Civ. P. 21 55(a); see Song v. Deeds, 947 F.2d 951 (9th Cir. 1991) (explaining that a motion to dismiss 22 constitutes an effort to “otherwise defend” the lawsuit). 23 /// 24 /// 25 /// 26 27 28 I Plaintiff's motion for default judgment is denied. 2 3 It is SO ORDERED. 4 5 || Dated: February 24, 2025 € 6 Hon. Cathy Ann Bencivengo 7 United States District Judge 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

