

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA**

Lopez v. Lee

No. 23-cv-03660-HSG (N.D. Cal. July 15, 2025) · No. 23-cv-03660-HSG · Decided July 15, 2025

SUMMARY

The United States District Court for the Northern District of California granted Deputy Attorney General Ruhparwar’s request to withdraw as counsel for defendant Cross in a prisoner civil rights action under 42 U.S.C. § 1983. The court denied plaintiff’s requests for entry of default and default judgment because the Clerk had not entered default, denied as moot the request to serve Cross with notices concerning default judgment, and denied plaintiff’s motion to strike the opposition to default judgment.

OPINION

1 2 3 4 UNITED STATES DISTRICT COURT 5 NORTHERN DISTRICT OF CALIFORNIA 6 7
ANDREW LOPEZ, Case No. 23-cv-03660-HSG 8 Plaintiff, ORDER GRANTING MOTION TO
WITHDRAW AS ATTORNEY; 9 v. DENYING REQUEST FOR ENTRY OF DEFAULT
JUDGMENT; DENYING AS 10 M. LEE, et al., MOOT REQUEST FOR SERVICE; DENYING
REQUEST TO STRIKE 11 Defendants. DKT. NO. 36 12 Re: Dkt. Nos. 23, 26, 29, 37, 41 13 14
Plaintiff, an inmate currently housed at San Quentin State Prison has filed a pro se civil 15 rights
action pursuant to 42 U.S.C. § 1983 regarding events that occurred at Pelican Bay State 16 Prison
(“PBSP”) while he was housed there.

This order addresses: (1) Deputy Attorney General 17 (“DAG”) Ruhparwar’s request to withdraw
as counsel, Dkt. No. 23; and (2) Plaintiff’s requests 18 related to entering default judgment against
defendant Cross, Dkt. Nos. 26-31, 37, 41. 19 **FACTUAL BACKGROUND** 20 I. Relevant CDCR
Procedures Governing Legal Representation of Staff Members 21 As part of CDCR’s employment
process, it is CDCR’s routine and practice to ask staff 22 members if they consent to being served
with complaints through CDCR if the complaint pertains 23 to actions they performed in the
course of their employment with CDCR.

The staff member’s 24 consent or declination is saved by CDCR. Dkt. No. 55-4 at 2. 25 To
facilitate the service of pro se complaints upon CDCR and its employees, CDCR 26 participates in
an e-service program that operates as follows. When the Court issues an order of 27 service, the
Court’s Clerk serves CDCR via email with a form titled “CDCR Report of E-Service 1 with the
operative complaint, the corresponding order of service, and the summons.

CDCR has 2 forty (40) calendar days to confirm through their database if the staff member who was named as a 3 defendant provided the consent to be served with a complaint through CDCR. CDCR 4 subsequently completes and returns the Report of E-Service Waiver to the Clerk, stating if the 5 staff member consented or declined to be served through CDCR. Unless there is a conflict of 6 interest, the Attorney General's Office generally represents CDCR staff in lawsuits brought under 7 the Prison Litigation Reform Act.

Before the Attorney General's Office can accept service on 8 behalf of the defendant, they must obtain either a verbal or written request for representation from 9 the defendant. Dkt. No. 55-4 at 2. 10 II. Defendant Cross 11 On July 2022, defendant Cross stopped working for CDCR. Dkt. No. 55-1 at 1. 12 On June 14, 2024, the Court screened the complaint and found that it stated cognizable 13 First Amendment retaliation claims against PBSP correctional officials Cupp, Hammer, Cross, 14 Lee, Brewer, and Davis, and dismissed the remaining claims and defendants.

See generally Dkt. 15 No. 23. The Court ordered service on defendants Cupp, Hammer, Cross, Lee, Brewer, and Davis. 16 Dkt. No. 23 at 8. 17 On June 28, 2024, CDCR timely returned its Report of E-Service Waiver to the Clerk, and 18 stated that defendant Cross consented to be served through CDCR. Dkt. No. 55-4 at 2. 19 On July 12, 2024, PBSP office technician A. McCovey contacted defendant Cross by 20 phone, and informed him that Plaintiff had filed a lawsuit against him.

McCovey asked defendant 21 Cross if he would like the Attorney General's Office to represent him. Defendant Cross confirmed 22 that he wished to be represented by the Attorney General's Office. McCovey explained that he 23 would forward a copy of Plaintiff's complaint and a request for representation for him to sign. 24 Defendant Cross gave McCovey his email address.

That same day, McCovey sent defendant 25 Cross a copy of the complaint and a request for representation for his signature. McCovey 26 requested that defendant Cross return the signed request to him. Defendant Cross did not respond 27 to this email. That same day, McCovey informed the California Attorney General's Office that 1 to this request, the Attorney General's Office was authorized to accept service on behalf of 2 defendant Cross.

Dkt. No. 55-4 at 2. 3 On July 16, 2024, Defendants, including defendant Cross, through counsel Deputy 4 Attorney General ("DAG") Ruhparwar, filed a waiver of reply and demand for jury trial, Dkt. No. 5 14; and waived service of summons, Dkt. No. 15. 6 On July 19, 2024, DAG Ruhparwar asked PBSP's litigation coordinator to coordinate a 7 call with defendant Cross to discuss the case and Plaintiff's discovery requests.

Dkt. No. 23-1 at 8 2. 9 On July 22, 2024, PBSP litigation coordinator Rush called defendant Cross. Defendant 10 Cross did not answer so Rush left a voicemail, asking defendant Cross to give him a call back. 11 Defendant Cross did not return Rush's call. Dkt. No. 55-2 at 2. That same

day, Rush informed 12 DAG Ruhparwar that he had left a voicemail for defendant Cross, but defendant Cross had not 13 responded.

Rush suggested that DAG Ruhparwar call defendant Cross directly. Rush gave DAG 14 Ruhparwar defendant Cross' phone number. DAG Ruhparwar called defendant Cross that day at 15 the number provided and left a voicemail.

In the voicemail, she introduced herself, told him that 16 she needed to discuss the case and Plaintiff's discovery requests, and asked defendant Cross to get 17 back to her within a week. Defendant Cross did not call back. Dkt. No. 23-1 at 2; Dkt. No. 55-1 18 at 2. 19 At the beginning of August 2024, DAG Ruhparwar called defendant Cross again. 20 Defendant Cross did not answer and DAG Ruhparwar left another voicemail.

In the voicemail, 21 DAG Ruhparwar informed defendant Cross that she required his assistance to respond to 22 discovery requests due September 16th; and that if he did not respond, she would have to 23 withdraw from representing him. Defendant Cross again did not respond. Dkt. No. 23-1 at 2; 24 Dkt. No. 55-1 at 2. 25 On August 5, 2024, PBSP office technician McCovey emailed defendant Cross for the 26 second time, and again provided him with a copy of the operative complaint and the request for 27 representation.

Defendant Cross did not respond to this email. That same day, McCovey obtained 1 copies of the operative complaint and the request for representation. The mailing was returned to 2 PBSP by the United States Postal Service with a label stating "Return to Sender; Attempted – not 3 known; unable to forward." Dkt. No. 55-3 at 2. 4 On September 11, 2024, DAG Ruhparwar filed a motion requesting to withdraw as counsel 5 for defendant Cross.

Dkt. No. 23. 6 On December 6, 2024, the Court ordered DAG Ruhparwar to file a supplemental brief 7 addressing the following issues: (1) the steps taken by DAG Ruhparwar, the California Attorney 8 General's Office, the California Department of Corrections and Rehabilitations ("CDCR"), and 9 any other relevant entity to determine defendant Cross' address or other contact information, and 10 explaining why the address of a former employee is unavailable to the CDCR; (2) the California 11 Attorney General's Office's legal basis for accepting service on behalf of defendant Cross, given 12 DAG Ruhparwar's statement that she has never communicated directly with defendant Cross; and 13 (3) the steps DAG Ruhparwar has taken to given Plaintiff notice of her intent to withdraw as his 14 attorney and the potential consequences of the withdrawal of representation.

ECF No. 54. 15 On December 10, 2024, DAG Ruhparwar learned from PBSP's personnel office that it had 16 another address for defendant Cross. Dkt. No. 55-1 at 2. 17 On December 11, 2024, DAG Ruhparwar called defendant Cross again. Defendant Cross 18 did not answer and DAG Ruhparwar left another voicemail.

In the voicemail, DAG Ruhparwar 19 informed Plaintiff that she had moved to withdraw from representing him because he had not 20 returned her prior calls, and said that if the Court granted the motion for withdrawal, his rights 21 might be adversely impacted, he would have to retain a new attorney, and CDCR would not pay 22 for a new attorney. She provided her phone number again.

Dkt. No. 55-1 at 2. 23 On December 12, 2024, DAG Ruhparwar sent a letter to defendant Cross's other address. 24 In the letter, DAG Ruhparwar stated that she had left defendant Cross three voicemails, that he had 25 never returned her calls, and that she would have to move to withdraw from representing him. She 26 again informed defendant Cross that if the Court granted the motion for withdrawal, his rights 27 might be adversely impacted, he would have to retain a new attorney, and CDCR would not pay 1 On December 13, 2024, DAG Ruhparwar had a video meeting with PBSP's personnel 2 specialist, who confirmed that the two addresses that she had received from PBSP were defendant 3 Cross's most recent addresses on file with PBSP.

Dkt. No. 55-1 at 2. 4 On December 20, 2024, DAG Ruhparwar timely filed the supplemental briefing requested 5 by the Court. Dkt. No. 55. 6 DISCUSSION 7 I. Request to Withdraw as Counsel for Defendant Cross (Dkt. No. 23) 8 DAG Ruhparwar has requested that she and the California Attorney General's Office be 9 allowed to withdraw as counsel for defendant Cross because (1) defendant Cross has never 10 directly contacted the Attorney General's Office; (2) defendant Cross has not responded to DAG 11 Ruhparwar's calls, voicemails, or letter; and (3) DAG Ruhparwar and the Attorney General's 12 Office are unable to contact defendant Cross.

Dkt. No. 23. In an August 2024 voicemail, a 13 December 11, 2024 voicemail and a December 12, 2024 letter, DAG Ruhparwar gave defendant 14 Cross notice of her intent to withdraw. In the December 11, 2024 voicemail and the December 12, 15 2024 letter, DAG Ruhparwar also gave defendant Cross notice of the potential consequences of 16 the withdrawal of representation.

Dkt. No. 55 at 4-5. 17 The decision to grant or deny a motion to withdraw as counsel is committed to the sound 18 discretion of the trial court. See *United States v. Carter*, 560 F.3d 1107, 1113 (9th Cir. 2009). In 19 ruling on motions to withdraw, courts have considered, among other things, (1) the reasons 20 withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm 21 withdrawal may cause to the administration of justice; and (4) the degree to which withdrawal will 22 delay the resolution of the case.

Quintero v. Wells Fargo Bank, N.A., No. 13-CV-04937-JSC, 23 2015 WL 13427800, at *1 (N.D. Cal. Jan. 6, 2015). "In this district, the conduct of counsel, 24 including withdrawal of counsel, is governed by the standards of professional conduct required of 25 members of the State Bar of California." *Cal. Native Plant Soc. v. E.P.A.*, C No. 06-cv-3604-PJH, 26 2008 WL 4911162, *1 (N.D.

Cal. Nov. 14, 2008). Cal. R. Prof. Conduct 3-700(C)(1)(d) provides that an attorney may request permission to withdraw if the client's "conduct renders it impracticable to continue representation." 1 Conduct 3-700(C)(1)(d). 2 The Court finds that defendant Cross's complete refusal to communicate with DAG 3 Ruhparwar and the California Attorney General's Office provides good cause for their withdrawal 4 as counsel.

See, e.g., *Acosta v. Frito-Lay, Inc.*, No. 15-CV-02128-JSC, 2015 WL 13757911, at *1 5 (N.D. Cal. Nov. 23, 2015) (granting counsel leave to withdraw where client had failed to respond 6 to counsel's numerous calls, voicemails, and certified mail and generally failed to cooperate with 7 counsel); *U.A. Local 342 Joint Labor-Mgmt. Comm. v. So. City Refrigeration, Inc.*, No. C-09-3219 8 JCS, 2010 WL 1293522, at *3 (N.D.

Cal. Mar. 31, 2010) (defendant's failure to pay fees and costs 9 due under engagement agreement and failure to cooperate or communicate effectively with 10 counsel constituted good cause to grant counsel leave to withdraw).

The Court further finds that 11 DAG Ruhparwar has provided defendant Cross with the notice required by N.D. Cal. Civ. L.R. 12 11-5(a) in her December 12, 2024 letter, and that she took reasonable steps to avoid reasonably 13 foreseeable prejudice to the rights of the client by leaving him a voicemail and sending him a letter 14 explaining the potential consequences of the withdrawal of representation.

N.D. Cal. Civ. L.R. 15 11-5(a) ("Counsel may not withdraw from an action until relieved by order of the Court after 16 written notice has been given reasonably in advance to the client and to all other parties who have 17 appeared in the case."); Cal. R. Prof. Conduct 3-700(A)(1) ("A member shall not withdraw from 18 employment until the member has taken reasonable steps to avoid reasonably foreseeable 19 prejudice to the rights of the client, including giving due notice to the client, allowing time for 20 employment of other counsel, complying with rule 3-700(D), and complying with applicable laws 21 and rules.").

The Court therefore GRANTS Deputy General Ruhparwar's request, filed on behalf 22 of herself and on behalf of the California Attorney General's Office, to withdraw as counsel for 23 defendant Cross. 24 II. Plaintiff's Default Judgment Related Requests (Dkt. Nos. 26-31, 37, 41) 25 Plaintiff has filed the following motions related to requesting entry of default judgment 26 against defendant Cross.

Plaintiff has requested that the Clerk of Court enter default judgment 27 against defendant Cross in the amount of \$3,000, plus interest and costs because default has been 1 that default has been entered against defendant Cross for failure to appear and that defendant 2 Cross is not in military service. Dkt. No. 26 ("Request for Entry of Default Judgment"); Dkt.

No. 3 27 ("Declaration in Support of Request for Default Judgment"); Dkt. No. 28 ("Notice of Motion 4 for Default Judgment"); Dkt. No. 29 ("Motion for Default Judgment"); Dkt. No. 31

("Declaration 5 as to Military Service"). 6 Defendants oppose the requests for entry of default judgment, arguing that defendant Cross 7 has not failed to plead or defend himself in this case, as is required by Fed.

R. Civ. P. 55(a) for 8 entry of default, because defendant Cross timely filed and served his waiver of reply on July 16, 9 2024, and served objections to Plaintiff's discovery requests that same day. Dkt. No. 36. 10 Plaintiff requests that the Court strike Dkt. No. 36, arguing that DAG Ruhparwar cannot 11 speak on behalf of defendant Cross as she has filed a motion on behalf of herself and the 12 California Attorney General's Office to withdraw as counsel for defendant Cross and has 13 acknowledged that she has never spoken with defendant Cross.

Plaintiff further argues that 14 default judgment should be entered against defendant Cross because DAG Ruhparwar's 15 representation that she has never spoken to defendant Cross indicates that defendant Cross's 16 pleadings in this action cannot constitute pleading or defending in this action, as they were 17 submitted on defendant Cross' behalf without his knowledge or input.

Dkt. No. 41. 18 The Court DENIES Plaintiff's requests for entry of default judgment against defendant 19 Cross, Dkt. Nos. 26-31, because default has not been entered against defendant Cross. Entry of 20 default is a prerequisite to the entry of default judgment.

The process for obtaining entry of 21 default and default judgment under Rule 55 is a two-step process: (1) seeking entry of default from 22 the clerk of the court and (2) filing a motion for default judgment before the district court. Fed. R. 23 Civ. P. 55; *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986) (recognizing "two-step process" 24 required by Rule 55); see also *Symantec Corp. v. Global Impact, Inc.*, 559 F.3d 922, 923 (9th Cir.

25 2009) (discussing difference between entry of default and default judgment). When the Clerk of 26 the Court has not entered default against a defendant, a motion for default judgment against that 27 defendant is improper. *Ardalan v. McHugh*, No. 13-CV-01138-LHK, 2013 WL 6212710, at *23 1 WL 320303, at *3 (E.D. Cal. Jan. 28, 2011) (denying motion for default judgment because 2 plaintiff failed to first seek clerk's entry of default from Clerk of Court); *Norman v. Small*, No. 09-3 cv-2235 WQH NLS, 2010 WL 5173683, at *2 (S.D.

Cal. Dec. 14, 2010) (denying default 4 judgment because sssclerk had not entered default). The Clerk of the Court has not entered default 5 as to defendant Cross, and therefore Plaintiff's motion for default judgment is improper. See 6 *Ardalan*, 2013 WL 6212710, at *23. 7 The Court DENIES Plaintiff's request to strike Dkt. No. 36. Dkt. No. 41. Plaintiff argues 8 that the Court should strike Dkt.

No. 36 because DAG Ruhparwar cannot file pleadings on behalf 9 of defendant Cross as she has been unable to contact him. Fed. R. Civ. P. 12(f) provides that the 10 Court may strike from a

pleading an insufficient defense or any redundant, immaterial, 11 impertinent, or scandalous matter. 12 “Immaterial” means that the matter has no essential or important relationship to the claim for relief or the defenses being pled. “Impertinent” matter includes statements that are not 13 necessary to the issues in question. “Scandalous” includes allegations that cast a cruelly derogatory light on a party or other person.

[T]he function of a 12(f) motion to strike is to 14 avoid the expenditure of time and money that must arise from litigating spurious issues by dispensing with those issues prior to trial....”... “A federal court will not exercise its 15 discretion under Rule 12(f) to strike a pleading unless the matters sought to be omitted have no possible relationship to the controversy, may confuse the issues, or otherwise 16 prejudice a party.

17 Nissou-Rabban v. Cap. One Bank (USA), N.A., 285 F. Supp. 3d 1136, 1143–44 (S.D. Cal. 2018). 18 Plaintiff has not demonstrated that Dkt. No. 36 is redundant, immaterial, impertinent, or 19 scandalous. Moreover, DAG Ruhparwar properly opposed the motion for entry of default 20 judgment against defendant Cross in Dkt. No. 36.

On the date that Dkt. No. 36 was filed 21 (September 23, 2025), DAG Ruhparwar was counsel for defendant Cross and therefore ethically 22 required to defend on behalf of defendant Cross. Dkt. No. 36 sets forth legal arguments as to why 23 entry of default judgment should not be entered against defendant Cross based on the record 24 before the Court. Dkt. No. 36 does not make any arguments or allegations that falsely imply that 25 DAG Ruhparwar has been in communication with defendant Cross.

The Court therefore DENIES 26 Plaintiff’s motion to strike Dkt. No. 36. 27 In light of the Court’s denial of Plaintiff’s request for entry of default judgment, the Court] defendant Cross with notice of the entry of default judgment. Dkt. No. 37. 2 CONCLUSION 3 For the reasons set forth above, the Court ORDERS as follows. 4 1.

The Court GRANTS Deputy General Ruhparwar’s request to withdraw as counsel 5 for defendant Cross on behalf of herself and on behalf of the California Attorney General’s Office. 6 || Dkt. No. 23. 7 2. The Court DENIES Plaintiffs requests for entry of default and default judgment 8 against defendant Cross. Dkt. Nos. 26, 29.

The Court DENIES as moot Plaintiffs request for the 9 || Court to serve defendant Cross with the notice of entry of default and notice of default judgment. 10 || Dkt. No. 37. The Court DENIES Plaintiffs request to strike Dkt. No. 36. Dkt. No. 41. 1] This order terminates Dkt. Nos. 23, 26, 29, 37, 41. 12 IT IS SO ORDERED. 13 Dated: 7/15/2025 5 15 ☐☐☐ ☐☐ DS. GILLIAM, JR. nited States District Judge 16 Z 18 19 20 21 22 23 24 25 26 27 28

