

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.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Haywood S. Gilliam, Jr.
JURISDICTION	United States District Court for the Northern District of California
DECIDED	July 15, 2025
DOCKET	23-cv-03660-HSG
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff, proceeding pro se in a 42 U.S.C. § 1983 action, moved for entry of default judgment against defendant Cross and moved to strike the opposition. Deputy Attorney General Ruhparwar moved to withdraw as counsel for Cross.
STANDARD OF REVIEW	A motion to withdraw as counsel is committed to the sound discretion of the trial court. Motions to strike are discretionary and are not granted unless the challenged matter has no possible relationship to the controversy, may confuse the issues, or otherwise prejudices a party.
PRECEDENTIAL VALUE	Nonprecedential district-court order
PARTIES	Andrew Lopez v. M. Lee, et al.

TOPICS

- default judgment
- default
- civil procedure
- section 1983

PRACTICE AREAS

civil procedure

civil rights

remedies

QUESTIONS PRESENTED

1. Whether counsel and the California Attorney General's Office had good cause to withdraw from representing defendant Cross.
2. Whether plaintiff could obtain default judgment against Cross when the Clerk had not entered default.
3. Whether the court should strike the opposition to plaintiff's default-judgment request under Federal Rule of Civil Procedure 12(f).
4. Whether plaintiff's request that the court serve Cross with notices concerning entry of default and default judgment was moot.

HOLDINGS

1. Counsel had good cause to withdraw because defendant Cross completely refused to communicate with counsel, and counsel provided the notice and took the reasonable steps required to avoid reasonably foreseeable prejudice to Cross.
2. A motion for default judgment is improper unless the Clerk has first entered default against the defendant.
3. The court declined to strike the opposition because plaintiff did not show that it was redundant, immaterial, impertinent, or scandalous, and counsel properly opposed the default-judgment request while still representing Cross.

KEY QUOTATIONS

"The Court finds that defendant Cross's complete refusal to communicate with DAG Ruhparwar and the California Attorney General's Office provides good cause for their withdrawal as counsel." (at 20–23)

"Entry of default is a prerequisite to the entry of default judgment." (at 18–23)

"The process for obtaining entry of default and default judgment under Rule 55 is a two-step process: (1) seeking entry of default from the clerk of the court and (2) filing a motion for default judgment before the district court." (at 20–23)

FACTUAL BACKGROUND

Plaintiff, an inmate, brought First Amendment retaliation claims under § 1983 concerning events at Pelican Bay State Prison. Defendant Cross had consented to service through CDCR, waived service through counsel, and was represented by the California Attorney General's Office, but he repeatedly failed to communicate with assigned counsel or respond to requests for information and representation documents. Plaintiff sought default judgment against Cross, although the Clerk had not entered default, and also sought to strike the opposition filed by Cross's counsel.

PROCEDURAL HISTORY

The court screened the complaint, dismissed certain claims and defendants, and ordered service on several correctional officials, including Cross. Cross waived service and, through counsel, filed a waiver of reply and jury demand and served objections to discovery. The court granted counsel's motion to withdraw, denied plaintiff's requests for entry of default and default judgment, denied the motion to strike, and denied as moot the request to serve Cross with notices concerning default.

DISPOSITION

other

CASES CITED

- United States v. Carter, 560 F.3d 1107, 1113 (9th Cir. 2009)
- Quintero v. Wells Fargo Bank, N.A., No. 13-CV-04937-JSC, 2015 WL 13427800, at *1 (N.D. Cal. Jan. 6, 2015)
- Cal. Native Plant Soc. v. E.P.A., C No. 06-cv-3604-PJH, 2008 WL 4911162, at *1 (N.D. Cal. Nov. 14, 2008)
- Acosta v. Frito-Lay, Inc., No. 15-CV-02128-JSC, 2015 WL 13757911, at *1 (N.D. Cal. Nov. 23, 2015)
- U.A. Local 342 Joint Labor-Mgmt. Comm. v. So. City Refrigeration, Inc., No. C-09-3219 JCS, 2010 WL 1293522, at *3 (N.D. Cal. Mar. 31, 2010)
- Eitel v. McCool, 782 F.2d 1470, 1471 (9th Cir. 1986)
- Symantec Corp. v. Global Impact, Inc., 559 F.3d 922, 923 (9th Cir. 2009)
- Ardalan v. McHugh, No. 13-CV-01138-LHK, 2013 WL 6212710, at *23
- Ardalan, 2010 WL 320303, at *3 (E.D. Cal. Jan. 28, 2011)
- Norman v. Small, No. 09-cv-2235 WQH NLS, 2010 WL 5173683, at *2 (S.D. Cal. Dec. 14, 2010)
- Nissou-Rabban v. Cap. One Bank (USA), N.A., 285 F. Supp. 3d 1136, 1143–44 (S.D. Cal. 2018)