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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BILL WALKER,

Plaintiff,

vs.

MEMBERS OF CONGRESS OF THE
UNITED STATES et al.,

Defendants

CASE NO. C04-1977RSM

MOTION P:

MOTION FOR DEFAULT FOR FAILURE TO
APPEAR

NOTE ON MOTION CALENDAR: DECEM-
BER 3, 2004

For the purpose of record in appeal, Plaintiff hereby moves for the court to declare all de-
fendants in default for failure to appear and failure to respond to the summons and waivers of
summons sent by Plaintiff. Proposed remedies are prescribed below. Plaintiff does not move to
vacate, reconsider or otherwise effect the order of dismissal made by this court on November 12,
2004 as this issue will be addressed in appeal.

The rules of the court are plain and unambiguous regarding service and the “duty” of
those served to respond to a summons issued by the court or a waiver of summons.

As noted in Plaintiff’s complaint under FRCP 4(i)(2)(A).defendants Snow and Everson
who were served a summons an official summons issued by the clerk of the court together with
copies of the complaint. Under FRCP 12 (3)(A)(B), defendants were required to present some
response to Plaintiff’s complaint within 60 days of the complaint having been filed with the U.S.

Motion P, Motion for Default
Case No: C04-1977RSM

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1 Attorney. This time period has expired and there has been no response either from Mr. Snow or
2 Mr. Everson, their legal representatives, the United States Attorney or the Attorney General of
3 the United States.

4 As to the other defendants who were served as noted in the complaint under FRCP 4(d),
5 none have responded, returned a waiver of summons, or made any action to this court as to ap-
6 pearance. As noted in Plaintiff's complaint, service under FRCP 4(d) is permitted under FRCP
7 4(i)(2)(B) and FRCP 4(e). However these rules require that should no waivers of service be re-
8 turned, that a formal copy of the summons and complaint shall be delivered either "personally"
9 or by "delivering a copy of the summons and of the complaint to an agent authorized by ap-
10 pointment or by law to receive service of process."

11 Plaintiff asserts that under the terms of 2 U.S.C. 118 which permits the United States At-
12 torney to represent the defendants, he has already delivered such a copy of the summons and
13 complaint "to an agent authorized by law to receive service of process" and that this agent au-
14 thorized by law has failed to appear before the court.

15 The facts are plain: no defendant to this suit, nor any legal representative of those defen-
16 dants have responded to any summons or waiver or summons as required by court rules and
17 therefore have failed to appear. Despite any ruling the court may have made in their favor, the
18 defendants do not have the right to ignore the court and its legal processes of service and are still
19 duty bound to respond to the summons and waivers of summons. They have not done so in a
20 timely and required fashion.

21 Under FCRP 4(5), "The cost to be imposed on a defendants under paragraph [FCRP 4]
22 (2) for failure to comply with a request to waive service of a summons shall include the cost sub-
23 sequently incurred in effecting service under subdivision (e), (f), or (h), together with the costs,
24 including a reasonable attorney's fee, of any motion required to collect the costs of service."
25

1 Plaintiff therefore moves (Proposed Order A) under this rule that the court immediately
2 order the defendants to comply with the waivers of summons and summons issued to Mr. Snow
3 and Mr. Everson and order that all costs incurred in filing the over 500 summons and copies of
4 the complaint shall be borne entirely by the defendants who shall also be ordered to present for
5 the record their legal representatives in this matter. Plaintiff moves the court order the United
6 States Marshall service deliver the complaints and summons to the defendants. Further Plaintiff
7 moves that the clerk of the court be permitted a reasonable time to process such a large volume
8 of complaints and summons and that sufficient time of service and response be granted by the
9 court. Finally, Plaintiff moves that the court order the time for Plaintiff to file his notice of ap-
10 peal be extended so as to permit this service upon the defendants to be completed.

11 Alternatively, if the court is not disposed to grant this motion, Plaintiff then moves (Pro-
12 posed Order B) the court rule Plaintiff has properly satisfied all service in this suit and defen-
13 dants are in default by reason of failure to appear. However the order of dismissal reached by the
14 court on November 12, 2004 shall not be effected by this ruling and the time of serving notice of
15 appeal by the Plaintiff as set by court rules shall remain unchanged.

16 Proposed orders (A) and (B) attached.

17 Dated this 2nd day of December, 2004

18
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