

Judge Coughenour

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

9	BILL WALKER,	)	
10		)	No. COO-2125C
11	Plaintiff,	)	
12		)	
13	v.	)	UNITED STATES' OPPOSITION TO
14		)	MOTION FOR DEFAULT JUDGMENT
15	UNITED STATES,	)	
16		)	
17	<u>Defendant</u>	)	

COMES NOW the United States and filed this Opposition to Motion for Default Judgment.

Argument

Plaintiff appears to think that by choosing to move to dismiss for lack of jurisdiction instead of Answering the Complaint the United States is somehow in default in this action. Of course, nothing could be further from the truth. In fact, the Federal Rules of Civil Procedure expressly provides that a motion to dismiss for lack of jurisdiction “shall be made before pleading if a further pleading is permitted.” Fed R. Civ. P. 12(b). Thus, by moving to dismiss plaintiff’s lawsuit prior to filing an Answer, the United States is not only not in default, but is acting as contemplated by the federal Rules of Civil Procedure.<sup>1</sup>

<sup>1</sup> If, as the United States contends, this Court lacks jurisdiction over plaintiff’s lawsuit, the United States ought not to have to Answer the allegations raised in the Complaint. Until this Court’s jurisdiction over this action is settled, no responsive pleading is required and plaintiff is not entitled to have the allegations in the Complaint admitted, denied, or otherwise answered.

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Conclusion

For the reasons set for above, the United States respectfully submits that plaintiff's motion for default judgment must be denied.

Dated this 20<sup>th</sup> day of February, 2001.

Respectfully submitted,

KATRINA C. PFLAUMER  
UNITED STATES ATTORNEY

(Signature)

HAROLD MALKIN  
ASSISTANT UNITED STATES ATTORNEY