

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

SCOTT V. ANDERSON,

Plaintiff,

v.

CASE NO. 23-3230-JWL

JEFF ZMUDA, et al.,

Defendants.

MEMORANDUM AND ORDER

This matter comes before the Court on Plaintiff's motion for default judgment. (Doc. 12.) Therein, Plaintiff asserts that the KDOC has failed to meet the January 2, 2024 deadline for submission of the *Martinez* report and he is unaware of and has not received any motions for extension of that deadline. Thus, Plaintiff seeks entry of default judgment. *Id.*

The motion will be denied. Default judgment is only appropriate when "a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend." *See* Fed. R. Civ. P. 55(a). A responsive pleading is not required until a defendant has been served with the summons and complaint or has waived service. *See* Fed. R. Civ. P. 12(a). Service will not occur in this action until and unless the screening process is completed. The *Martinez* report was ordered as part of the screening process, which is ongoing. Thus, the motion for default judgment is premature and will be denied without prejudice at this time.

Second, although Plaintiff apparently has not yet received notification, the KDOC filed on January 2, 2024 a motion for an extension of time in which to file the *Martinez* report. (Doc. 10.) The Court granted the motion and the *Martinez* report is now due on or before March 4, 2024. (Doc. 11.) In the order granting the motion, the Court granted Plaintiff to and including April 4,

2024 to file a reply to the *Martinez* report if he wishes to do so. *Id.* Thus, the deadline for filing has not passed.

IT IS THEREFORE ORDERED that Plaintiff's motion for default judgment (Doc. 12) is **denied** without prejudice as premature.

IT IS SO ORDERED.

DATED: This 4th day of January, 2024, at Kansas City, Kansas.

S/ John W. Lungstrum
JOHN W. LUNGSTRUM
United States District Judge