

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MOHAMED A. EL-TABECH,)	
)	4:04cv3231
Plaintiff,)	
)	
vs.)	MEMORANDUM AND ORDER
)	
)	
HAROLD W. CLARKE, et al.,)	
)	
Defendants.)	

This matter is before the court on the following pending motions: (1) filing no. 37, the Motion for Entry of Default against defendants-Elizabeth Conley, Dave Thomas, Janssen Williams and Paul Church, filed by the plaintiff, Mohamed A. El-Tabech; (2) filing no. 39, the plaintiff's Motion for Default Judgment against defendants-Elizabeth Conley, Dave Thomas, Janssen Williams and Paul Church; (3) filing no. 44, the Motion for Leave to File Brief Outside of Time filed by defendants-Elizabeth Conley, Dave Thomas, and Janssen Williams; (4) filing no. 49, the plaintiff's Motion for Enlargement of Time to respond to motions to dismiss; and (5) filing no. 50, the plaintiff's Motion for a Temporary Restraining Order ("TRO").

Filing nos. 37 and 39, the plaintiff's motions for clerk's entry of default and default judgment, are denied. In filing no. 33, defendants-Elizabeth Conley, Dave Thomas, and Janssen Williams requested an extension of time to respond to the plaintiff's complaint. Filing no. 34 is an entry on the docket sheet for this case made by the Clerk of Court on September 2, 2004, granting the requested extension of time. Those defendants then filed a motion to dismiss the complaint on October 1, 2004 (filing no. 41) within the extended period granted by the Clerk of Court. Therefore, defendants-Elizabeth Conley,

Dave Thomas, and Janssen Williams are not in default.¹

In filing no. 44, defendants-Elizabeth Conley, Dave Thomas, and Janssen Williams request additional time to file their brief in support of their motion to dismiss because transmission of the defendants' brief by the court's electronic filing system malfunctioned. Filing no. 44 is granted, and the brief (attachment to filing no. 44) is accepted for filing *instanter*.

The plaintiff seeks additional time in filing no. 49 to respond to the defendants' motions to dismiss. Filing no. 49 is granted, although the court notes that the plaintiff has since filed his briefs (filing nos. 48 and 49) in opposition to the motions to dismiss.

In filing no. 50, the plaintiff moves for a TRO regarding the food he has been served during a religious holiday. The defendants have appeared in this case, and, therefore, filing no. 50 is not appropriately treated as a motion for an *ex parte* TRO. However, filing no. 50 does not include a Certificate of Service showing service of the motion on the defendants. Therefore, filing no. 50 is denied, without prejudice to reassertion of the motion accompanied by a certificate of service demonstrating delivery by first-class mail to all defendants.

THEREFORE, IT IS ORDERED:

1. That filing nos. 37 and 39, the plaintiff's motions for clerk's entry of default

¹ While defendant-Paul Church did not request additional time or join in the motion to dismiss, the court cannot determine whether that defendant has been properly served with process. Mr. Church did not sign a receipt for the delivery of the summons and complaint by certified mail. Although another person signed for him, it is not clear whether that person was authorized to receive certified mail for Mr. Church or even whether Mr. Church was present at the location to which the certified mail was directed. The plaintiff is free to reassert his Motions as to Mr. Church, supported by sufficient information for the court to determine whether Mr. Church has been properly served.

and default judgment, are denied;

2. That filing no. 44, the motion by defendants-Elizabeth Conley, Dave Thomas, and Janssen Williams for additional time to file their brief, is granted, and the brief (attachment to filing no. 44) is accepted for filing instanter;

3. That filing no. 49, the plaintiff's Motion for Enlargement of Time, is granted;
and

4. That filing no. 50, the plaintiff's Motion for a TRO, is denied, without prejudice to reassertion of the motion accompanied by a Certificate of Service demonstrating delivery of a copy of the motion by first-class mail to all defendants.

DATED this 4th day of November, 2004.

BY THE COURT:

s/ Joseph F. Bataillon
JOSEPH F. BATAILLON
United States District Judge