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★ JUN 26 1981 ★

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- TIME A.M. _____
P.M. _____

DOLLY M. E. FILARTIGA and
DR. JOEL FILARTIGA,

79 C 917

Plaintiffs,

ORDER

-against-

AMERICO NORBERTO PENA-IRALA,
et al.,

Defendants.

-----X
CENTER FOR CONSTITUTIONAL RIGHTS
(Peter Weiss, Rhonda Copelon, John
W. Corwin, Jose Antonio Lugo, Esqs.,
of counsel)
New York, New York
GOREN AND MAGGIO, ESQS.
(Michael Maggio, Esq., of counsel)
Washington, D. C.
for plaintiffs

NICKERSON, District Judge

This is a motion by plaintiffs for the entry of a judgment of default against defendant Pena-Irala pursuant to Federal Rule of Civil Procedure 55(b)(2).

Plaintiffs brought this action "for damages for violation of human rights for the wrongful torture and murder of the decedent Joel Filartiga" against the former Inspector General of Police of Ascuncion, Paraguay, who was then being held in custody by the Immigration and Naturalization Service as an illegal alien. Defendant Pena-Irala made a

timely motion to dismiss the complaint for lack of subject matter jurisdiction. Defendant was represented by two firms of American attorneys and by Paraguayan counsel, Dr. Jose Emilio Gorostiaga. By a Memorandum and Order of this court filed on May 16, 1979, the motion to dismiss was granted and the stay of defendant's deportation was continued for 48 hours to enable plaintiffs to apply to the Court of Appeals for the Second Circuit for a further stay.

On May 22, 1979 the Court of Appeals denied plaintiff's motion for a further stay and defendant shortly thereafter returned to Paraguay. He has apparently not returned to this jurisdiction since that time.

On June 30, 1980, the Court of Appeals reversed this court's grant of defendant's motion to dismiss and remanded the action for further proceedings. Since that decision was rendered, defendant has failed to answer or otherwise take part in this action. Defendant's American attorneys thereafter moved for leave to withdraw from this action, stating, in an affidavit of Murray D. Brochin, Esq., that they had sent a copy of the Opinion of the Court of Appeals to defendant through his Paraguayan counsel, and that they had been informed by Dr. Gorostiaga that defendant was unable to pay for further services. On November 7, 1980, the motion to withdraw was granted.

Federal Rule of Civil Procedure 12(a)(1) provides that

a responsive pleading shall be filed within 10 days of notice of the denial of a motion made pursuant to Rule 12. As is established in the affidavit of Mr. Brochin, defendant Pena-Irala received notice of the decision of the Court of Appeals denying his motion to dismiss shortly after it was rendered, through his American and Paraguayan attorneys. By affidavit of Rhonda Copelon, Esq., plaintiff states that notice of the instant motion was sent to defendant Pena-Irala through his Paraguayan attorney thirty days prior to its presentation to the court.

The motion for entry of a default judgment is granted. The issue of the amount of damages due plaintiffs is respectfully referred to Magistrate John Caden for determination. So ordered.

Dated: Brooklyn, New York
June 23, 1981

Eugene H. Nickerson
Eugene H. Nickerson, U.S.D.J.

The Clerk shall make copies of this Memorandum and Order and serve it upon the parties and Magistrate John Caden.