

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MICHAEL DAVIS,

Plaintiff,

v.

ZHOU LIANG,

Defendant.

CASE NO. C17-849-MJP

ORDER DENYING PLAINTIFF'S  
MOTION FOR DEFAULT

THIS MATTER comes before the Court on Plaintiff's Motion for Default. (Dkt. No. 12.)  
Having reviewed the motion and all related papers, the Court DENIES the motion without  
prejudice.

**Background**

This is a personal injury case arising out of an automobile accident between Plaintiff  
Michael Davis and Defendant Zhou Liang, a citizen of the People's Republic of China. (Dkt.  
No. 12 at 1.) On June 4, 2014, Plaintiff was a passenger on a King County Metro bus that was  
struck by Defendant's vehicle. (Id. at 1-2; Dkt. No. 13, Ex. 1.) As a result of the collision,

1 Plaintiff was seriously injured, and has since incurred hundreds of thousands of dollars in  
2 medical expenses. (Dkt. No. 13, Ex. 2.)

3 On June 28, 2016, Plaintiff filed suit against Defendant in the Superior Court of  
4 Washington. (Id., Ex. 3.) Defendant answered through counsel alleging affirmative defenses  
5 including “Insufficiency of Process,” “Insufficiency of Service of Process,” and “Lack of  
6 Personal Jurisdiction.” (Id., Exs. 4, 5.) Defendant served and responded to discovery requests in  
7 November 2016. (Id.) As the case was pending, Plaintiff claims his counsel repeatedly  
8 attempted to effectuate service upon Defendant in China pursuant to Article 15 of the Hague  
9 Convention.<sup>1</sup> (Dkt. No. 12 at 2; Dkt. No. 13, Ex. 8.) However, each of these submissions were  
10 rejected by the Chinese Ministry of Justice due to being “incomplete in one way or another.”  
11 (Id.; see also Dkt. No. 13, Ex. 9.) On June 27, 2017, Plaintiff moved for voluntary nonsuit in the  
12 state action, and his claims were dismissed without prejudice. (Dkt. No. 12 at 3.)

13 On June 1, 2017, Plaintiff filed this suit in federal court. Plaintiff sent Defendant’s  
14 counsel in the state court action a request for waiver of service, but the waiver was not returned  
15 and counsel did not appear in this action. (Id.; Dkt. No. 5, Ex. A.) Plaintiff’s counsel  
16 transmitted the federal complaint and summons to the Ministry of Justice on September 28,  
17 2017, and after receiving no response or confirmation, again in November 2017. (See Dkt. No.  
18 5, Ex. B; Dkt. No. 8, Ex. A.) Through a translator, Plaintiff’s counsel contacted the Ministry of  
19 Justice via telephone on January 10, 2018. (Dkt. No. 8, Ex. A.) According to the translator, the  
20 Ministry of Justice acknowledged receipt of Plaintiff’s documents and indicated that they were

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23 <sup>1</sup> Exhibit 8 shows that documents related to the state court case were submitted to the Ministry of  
24 Justice on August 17, 2016 and March 24, 2017.

1 “on the way to the Defendant.” (Id.) On March 6, 2018, the translator reported that the Ministry  
 2 of Justice had rescinded its acknowledgement of receipt. (Dkt. No. 13, Ex. 10.)

3 Plaintiff now moves for entry of default judgment pursuant to Federal Rule of Civil  
 4 Procedure 55 and Article 15 of the Hague Convention. (Dkt. No. 12.)

### 5 **Discussion**

6 Before a party can obtain default judgment under Federal Rule of Civil Procedure 55(b),  
 7 there must be an entry of default pursuant to Rule 55(a). See Fed. R. Civ. P. 55. A default may  
 8 be entered “[w]hen a party against whom a judgment for affirmative relief is sought has failed to  
 9 plead or otherwise defend, and that failure is shown by affidavit or otherwise.” Fed. R. Civ. P.  
 10 55(a). The Court does not have jurisdiction to enter default until the party is served with the  
 11 summons and complaint pursuant to Federal Rule of Civil Procedure 4. See Direct Mail  
 12 Specialists, Inc. v. Eclat Comput. Techs., Inc., 840 F.2d 685, 688 (9th Cir. 1988) (“A federal  
 13 court does not have jurisdiction over a defendant unless the defendant has been served properly  
 14 under [Rule 4].”). Rule 4 authorizes service of process on foreign defendants “by an  
 15 internationally agreed means reasonably calculated to give notice, such as those means  
 16 authorized by the Hague Convention . . .” Fed. R. Civ. P. 4(f)(1).

17 Under the Hague Convention, service may be effected by forwarding the summons and  
 18 complaint to the Central Authority for the country in which service is to be made (i.e., the  
 19 Chinese Ministry of Justice), along with a form Request for Service. See Hague Convention,  
 20 Arts. 2, 3, 5. Once the Central Authority has completed service, it must provide a Certificate  
 21 detailing “the method, the place, and the date of service” or explaining why service did not  
 22 occur, and thereafter must forward the completed Certificate “directly to the applicant.” Id., Art.  
 23 6.

1 Despite having not received a Certificate, Plaintiff argues that entry of default against  
 2 Defendant is proper under Article 15 of the Hague Convention, which provides that:

3 Each Contracting State shall be free to declare that the judge . . . may give judgment even  
 4 if no certificate of service or delivery has been received, if all the following conditions  
 are fulfilled:

- 5 a) the document was transmitted by one of the methods provided for in this Convention;
- 6 b) a period of time of not less than six months, considered adequate by the judge in the  
 particular case, has elapsed since the date of the transmission of the document;
- 7 c) no certificate of any kind has been received, even though every reasonable effort has  
 been made to obtain it through the competent authorities of the State addressed.

8 Id., Art. 15.

9 While more than six months have passed since Plaintiff transmitted the summons and  
 10 complaint in this case to the Ministry of Justice, and while no certificate has been received,  
 11 Plaintiff has not shown that he has properly served Defendant in satisfaction of Article 15(a).  
 12 Neither the declaration filed by Plaintiff's paralegal (Dkt. No. 13) nor the relevant exhibits (Id.,  
 13 Exs. 8, 9, 10; Dkt. No. 5, Ex. B) indicate whether Plaintiff's Request for Service forms attached  
 14 both English and Chinese versions of the federal summons and complaint, as the Ministry of  
 15 Justice repeatedly requested with regard to the state court case. (See Dkt. No. 13, Ex. 9 at 4-5  
 16 ("The specific reasons for the return are as follows: . . . Please provide with the original English  
 17 version of the judicial documents as well" . . . "Please provide with the original language version  
 18 of the judicial documents as well.")) Instead, the Request for Service submitted on September  
 19 28, 2017 appears to attach *only* the Chinese version of these documents. (See Dkt. No. 5, Ex. B.)

20 Without more, the Court cannot conclude that Defendant has been properly served under  
 21 the Hague Convention such that it has jurisdiction to grant entry of default. Therefore, the Court  
 22 DENIES Plaintiff's motion without prejudice. Plaintiff is directed to re-submit the Request for  
 23 Service to the Chinese Ministry of Justice, and to file a statement evidencing that he has done so  
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1 within thirty days of the date of this Order. If such a statement is not filed by that time, this case  
2 will be dismissed without prejudice.

3 The clerk is ordered to provide copies of this order to all counsel.

4 Dated April 5, 2018.

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7 Marsha J. Pechman  
8 United States District Judge  
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