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 BILLINGS DIV.
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**IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF MONTANA
 BILLINGS DIVISION**

KARL WAYNE GREEN,)	CV-09-112-BLG-RFC
)	
Plaintiff,)	
)	
vs.)	
)	ORDER ADOPTING FINDINGS
)	AND RECOMMENDATIONS OF
RAY H. HOOD, Secretary of)	U.S. MAGISTRATE JUDGE
Transportation,)	
)	
Defendant.)	
_____)	

On February 23, 2010, United States Magistrate Judge Carolyn Ostby entered Findings and Recommendation. Magistrate Judge Ostby recommends this Court construe Plaintiff's Motion for Summary Judgment against Defendant for Failure to Respond to Complaint (*Doc. 7*) as a Rule 55 Motion for Default and deny said motion.

Upon service of a magistrate judge's findings and recommendation, a party has 14 days to file written objections. 28 U.S.C. § 636(b)(1). In this matter, no party filed objections to the February 23, 2010 Findings and Recommendation. Failure to object to a magistrate judge's findings and recommendation waives all objections to the findings of fact. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1999). However, failure to object does not relieve this Court of its burden to review de novo the magistrate judge's conclusions of law. *Barilla v. Ervin*, 886 F.2d 1514, 1518 (9th Cir. 1989).

After an extensive review of the record and applicable law, this Court finds Magistrate Judge Ostby's Findings and Recommendation are well grounded in law and fact and adopts them in their entirety.

Rule 55 of the Federal Rules of Civil Procedure provides: "When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default." Fed.R.Civ.P. 55(a).

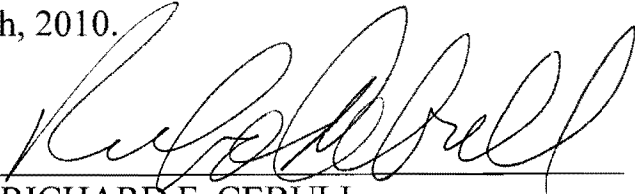
Plaintiff has failed to comply with Rule 55 in that he has not filed proof of service even though he states he has the documentation to show the service date.

Also, default is not appropriate because Defendant filed an Answer to the Complaint on March 25, 2010.

Accordingly, **IT IS HEREBY ORDERED** Plaintiff's Motion for Summary Judgment against Defendant for Failure to Respond to Complaint (*Doc. 7*) is construed as a Rule 55 Motion for Default and **DENIED**.

The Clerk of Court shall notify the parties of the entry of this Order.

DATED the 26th day of March, 2010.



RICHARD F. CEBULL
UNITED STATES DISTRICT JUDGE