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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

GCB Communications, Inc.,
Plaintiff,

vs.

Next-G Communications, Inc.,
Defendant.

No. CV 10-563-PHX-FJM

ORDER

The court has before it plaintiff’s “Motion for Entry of Default Judgment” (doc. 8), “Application for Entry of Default Judgment”(doc.9), defendant’s Response (doc. 13), and plaintiff’s Reply (doc.14).

Defendant’s Answer was due on April 20, 2010. On April 23, 2010, plaintiff denied defendant’s request for an extension to May 10, 2010. On April 26, 2010, plaintiff filed its motion for default judgment even before it applied for entry of default. On April 29, 2010, plaintiff applied for entry of default by the clerk and on that same day defendant filed an Answer and response to the motion for entry of default judgment. Because the Answer was filed on the same day as the application for entry of default, the clerk did not enter default under Rule 55(a), Fed. R. Civ. P.

The entry of default must precede the entry of default judgment. The filing of an answer on the day default was applied for mooted the default. And, without an entry of

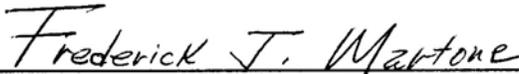
1 default, a motion for entry of default judgment under Rule 55(b), Fed. R. Civ. P., does not
2 lie.

3 The defendant's answer, although late, was filed only six days after it was due. While
4 defendant's practices were sloppy, and risky, no good purpose is served by entering default
5 now, where, as here, no prejudice is shown.

6 Accordingly, it is ORDERED DENYING plaintiff's application for entry of default
7 (doc. 9) and its motion for entry of default judgment (doc. 8).

8 An order scheduling a Rule 16 conference will follow.

9 DATED this 13th day of May, 2010.

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 Frederick J. Martone
13 United States District Judge
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