

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
TEXARKANA DIVISION

LANEY HARRIS and  
KEITH BURSEY

PLAINTIFF

V.

Civil No. 4:12-cv-4050

CITY OF TEXARKANA, ARKANSAS ET AL.

DEFENDANT

**ORDER**

Before the Court is the Report and Recommendation filed December 18, 2013, by the Honorable Barry A. Bryant, United States Magistrate Judge for the Western District of Arkansas. (ECF No. 44). Judge Bryant recommends that Plaintiffs' Motion for Clerk to Enter Default (ECF No. 40) and Motion for Default Judgment as to Bubba Green and Bubba Green Towing & Automotive Center ("Bubba Green") and Motion to Set Aside Answer to Amended Complaint. (ECF No. 41) be denied. On December 30, 2013, Plaintiffs filed objections to Judge Bryant's Report and Recommendation. (ECF No. 49). After reviewing the record *de novo*, the Court adopts Judge Bryant's Report and Recommendation as its own.

Plaintiffs object to the Report and Recommendation because they believe the Court should compel Bubba Green "to plea before this [C]ourt in person" why he filed his answer two days late. The entry of a default judgment is within the discretion of the district court. *Forsythe v. Hales*, 255 F.3d 487, 491 (8th Cir. 2001). However, the entry of a default should be a "rare judicial act." *Comiskey v. JFTJ Corp.*, 989 F.2d 1007, 1009 (8th Cir. 1993). Default judgments are not favored because they are strong procedural penalties that do not reach the merits of the case. *U.S. on Behalf of and for the Use of Time Equipment Rental & Sales, Inc. v. Hare*, 983 F.2d 128, 129 (8th Cir. 1993). When determining whether a default judgment is appropriate, the

Court “must consider whether the assertedly defaulting party has filed a responsive Answer, or other pleading, prior to an entry of a default.” *Semler v. Klang*, 603 F. Supp. 2d 1211, 1218-19 (D. Minn. 2009).

The Court agrees with Judge Bryant that a default judgment is not warranted in this case. Bubba Green filed an answer only two days after the deadline and has responded to Plaintiffs’ motion for a default judgment. Further, in his response to Plaintiffs’ motion for a default judgment, Bubba Green informs the Court that his answer was late because he was determining whether he had insurance coverage relating to the suit. Thus, the Court finds that Judge Bryant properly denied Plaintiffs’ motion for a default judgment and concludes that a hearing is not warranted.

For the reasons set forth above, the Court overrules Plaintiffs’ objections and adopts Judge Bryant’s Report and Recommendation. (ECF No. 44). Accordingly, Plaintiffs’ Motion for Default Judgment and Default and Motion to Set Aside Answer (ECF No. 40-41) are **DENIED**.

**IT IS SO ORDERED**, this 18th day of April, 2014.

/s/ Susan O. Hickey  
Susan O. Hickey  
United States District Judge