

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-00215-KLM-MEH

MARK TUCKEL,

Plaintiff,

v.

MAJOR GROVER, AND
STEVE KEYS,

Defendants.

ORDER

ENTERED BY MAGISTRATE JUDGE KRISTEN L. MIX

This matter is before the Court on Plaintiff's **Motion for Default as to Defendant Steve Keys** [Docket No. 39; Filed June 25, 2010] (the "Motion"). As a preliminary matter, default judgment shall not be imposed against a party until the clerk has entered default against him pursuant to Fed. R. Civ. P. 55(a). As Plaintiff has not sought entry of default, the Motion is improper and subject to denial on this basis alone.

In any event, neither entry of default nor default judgment shall be imposed here because the Motion is based upon incorrect premises. First, given that the summons was returned executed as to Defendant Keys on May 24, 2010 [Docket No. 29], his answer or response was due on or before June 14, 2010. The Motion to Dismiss filed by Defendant Keys on that date is both timely and sufficient to constitute a response [Docket No. 31]. Second, to the extent that Plaintiff argues that Defendant Keys cannot be represented by counsel for Defendant Grover because she did not initially file an appearance on his behalf, this argument has no merit.

IT IS HEREBY **ORDERED** that the Motion is **DENIED**. As noted in my prior Order, the Court deems Plaintiff's Response [Docket No. 38] to be a response to both pending dispositive motions [Docket Nos. 20 & 31]. Defendants shall file a single reply, if any, on or before June 28, 2010. **No further briefing shall be permitted.**

Dated: June 28, 2010

BY THE COURT:

s/ Kristen L. Mix

U.S. Magistrate Judge

Kristen L. Mix