

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 12-cv-03317-REB-KLM

JAMES FAIRCLOTH,

Plaintiff,

v.

RAE TIMME, Warden, in her official and individual capacities,
GARY MORGAN, Mental Health Clinician/Designee, in his official and individual capacities,
BERNES, Chief Mental Health Clinician/Designee, in her official and individual capacities,
GARCIA, Mental Health Clinician/Designee, in her official and individual capacities,
JACQUELINE MCCALL, Administrative Head/Designee, in her official and individual capacities,
JOSEPH GIGANTI, Captain, in his official and individual capacities,
UNKNOWN GRAVEYARD DUTY OFFICER AT F.C.F, in his official and individual capacities,
UNKNOWN F.C.F. CELLHOUSE 5 CORRECTIONAL OFFICERS, in their official and individual capacities,
MARQUEZ, Correctional Officer, in his official and individual capacities,
UNKNOWN F.C.F. HEALTH SERVICES ADMINISTRATOR, in their official and individual capacities,
TOM BENEZE, Lt., in his official and individual capacities,
VIOLA, Sgt., in his official and individual capacities,
MILLER, Mailroom Correctional Officer, in her official and individual capacities, and
LINDA WORTHEN, Lt., in her official and individual capacities,

Defendants.

MINUTE ORDER

ENTERED BY MAGISTRATE JUDGE KRISTEN L. MIX

This matter is before the Court on Plaintiff's **Petition for Default Judgment** [Docket No. 29; Filed June 6, 2013] (the "Petition"). In the Petition Plaintiff seeks a default judgment against Defendants.

"[Federal] Rule [of Civil Procedure] 55 mandates a two-step process for a party who seeks a default judgment in his favor." *Williams v. Smithson*, 57 F.3d 1081, at *1 (10th Cir. June 20, 1995) (unpublished table decision); *U.S. Commodity Futures Trading Com'n v.*

Trimble, Civil Action No. 11-cv-02887-PAB-KMT, 2013 WL 317576, at *1 (D. Colo. Jan. 28, 2013). First, the party seeking a default judgment must request an entry of default from the Clerk of the Court pursuant to Fed. R. Civ. P. 55(a). *Id.* After default has been entered by the Clerk, the party may seek default judgment pursuant to Fed. R. Civ. P. 55(b). *Id.* Here, Plaintiff never sought entry of default pursuant to Fed. R. Civ. P. 55(a). Accordingly,

IT IS HEREBY **ORDERED** that the Petition [#29] is **DENIED without prejudice**.

Dated: June 10, 2013