

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-cv-01901-KLM

SHUN BIRCH,

Plaintiff,

v.

SPRINT/NEXTEL CORP.,

Defendant.

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**MINUTE ORDER**

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**ENTERED BY MAGISTRATE JUDGE KRISTEN L. MIX**

This matter is before the Court on **Plaintiff[’s] Motion for Entry of Default Judgment** [#11]<sup>1</sup> (the “Motion”). In the Motion, Plaintiff asks the Court to enter default judgment against Defendant. *Id.* at 1. The Motion must be denied for two independent reasons.

First, on October 29, 2015, Defendant filed its Motion to Dismiss [#10]. Further, the Summons returned in this case shows that service was effected on October 8, 2015 [#9]. As a result, Defendant’s Motion to Dismiss was timely filed. See Fed. R. Civ. P. 12(a)(1)(A) (requiring defendant to file response to complaint within 21 days of service). Therefore, Plaintiff’s argument that Defendant “has failed to defend” this lawsuit is incorrect and the Court will deny the Motion. The Court notes that at the time he mailed the Motion, Plaintiff was likely unaware of the Motion to Dismiss. The certificate of service attached to the Motion was signed on October 28, 2015, but was not received by the Court and entered on the docket until November 2, 2015.

In addition, the Federal Rules of Civil Procedure contemplate a two-step process for entry of default judgment. *Williams v. Smithson*, 57 F.3d 1081, at \*1 (10th Cir. June 20, 1995) (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

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<sup>1</sup> “[#11]” is an example of the convention I use to identify the docket number assigned to a specific paper by the Court’s case management and electronic case filing system (CM/ECF). I use this convention throughout this Minute Order.

under 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.* Plaintiff did not seek entry of default prior to filing the Motion. As a result, the Motion is also subject to denial for failure to seek and obtain entry of default prior to seeking entry of default judgment. Accordingly,

IT IS HEREBY **ORDERED** that the Motion [#11] is **DENIED**.

Dated: November 3, 2015