

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

PHOENIX ENTERTAINMENT  
PARTNERS, LLC, a North Carolina  
LLC

Plaintiff,

v.

Case No: 2:16-cv-557-FtM-99CM

ENTCOM, INC.,

Defendant.

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**ORDER**

This matter comes before the Court upon review of Plaintiff's Motion for Entry of Clerk's Default (Doc. 8) filed on September 30, 2016. Pursuant to Rule 55(a) of the Federal Rules of Civil Procedure, Plaintiff seeks entry of clerk's default against Defendant, Entcom, Inc., for failure to defend. Doc. 8. On July 14, 2016, Plaintiff filed a Complaint (Doc. 1) against Defendant, and Defendant's time to respond to Plaintiff's Complaint (Doc. 1) has expired.

Pursuant to Rule 55(a), Federal Rules of Civil Procedure, "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default." Similarly, Middle District of Florida Local Rule 1.07(b) provides:

When service of process has been effected but no appearance or response is made within the time and manner provided by Rule 12, Fed. R. Civ. P., the party effecting service shall promptly apply to the Clerk for entry of default pursuant to Rule 55(a), Fed. R. Civ. P.

M.D. Fla. R. 1.07(b). Prior to directing the Clerk to enter a default, the Court must first determine whether Plaintiff properly effected service of process. *United States v. Donald*, No. 3:09-cv-147-J-32HTS, 2009 WL 1810357, at \*1 (M.D. Fla. June 24, 2009).

Here, the Court cannot verify whether proper service was effectuated upon Defendant because a Return of Service was not filed. *Donald*, 2009 WL 1810357, at \*1; *Barker v. Sai Deva Corp.*, No. 3:08-cv-683-J-12MCR, 2008 WL 4791049, at \*1 (M.D. Fla. Oct. 29, 2008) (denying the plaintiff's motion for entry of clerk's default when no return of service that shows proper service upon the corporate defendant was filed). The record reveals that the Summons were issued to Defendant on July 15, 2016. Doc. 2. Plaintiff, however, neither alleges that Defendant was properly served nor attaches a copy of the Return of Service to its motion. Doc. 8; *Barker*, 2008 WL 4791049, at \*1.

ACCORDINGLY, it is hereby

**ORDERED:**

Plaintiff's Motion for Entry of Clerk's Default (Doc. 8) is **DENIED without prejudice**.

**DONE and ORDERED** in Fort Myers, Florida on this 6th day of October, 2016.

  
CAROL MIRANDO  
United States Magistrate Judge

Copies:

Counsel of record