

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION**

BAYVIEW LOAN SERVICING, LLC,

Plaintiff,

v.

Case No: 5:18-cv-51-Oc-30PRL

**DIANA R. MACE, STEVEN B. MACE,
JENNIFER MACE, JPMORGAN
CHASE BANK, N.A. and UNKNOWN
TENANT #2**

Defendants.

ORDER

Defendant and Counterclaimant Steven Mace filed the instant motion for clerk's default against Plaintiff Bayview Loan Servicing, LLC. (Doc. 17).

Pursuant to Rule 55(a), Fed.R.Civ.P, "[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." On February 5, 2018, Defendant filed a Counterclaim against Plaintiff. (Doc. 5). While Plaintiff has not timely answered the Counterclaim, it cannot be said that it has not "otherwise defend[ed]" this action. Indeed, several days before Defendant filed the motion for entry of default, Plaintiff filed a motion to remand this action to state court. (Doc. 17). Moreover, Plaintiff promptly responded to the instant motion and requested an extension of time. (Doc. 18). Plaintiff's counsel represented that due to a number of circumstances he just recently learned of the Counterclaim.

Accordingly, and in accordance with the judicial preference for a decision on the merits, Defendant's motion for clerk's default (Doc. 17) is due to be **DENIED**. Plaintiff's motion for

extension of time to respond to the Counterclaim (Doc. 18) is **GRANTED**. Plaintiff shall file and serve its response to Steven Mace's Counterclaim on or before **March 16, 2018**.

DONE and **ORDERED** in Ocala, Florida on March 6, 2018.



PHILIP R. LAMMENS
United States Magistrate Judge

Copies furnished to:

Counsel of Record
Unrepresented Parties