

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

DAVID W. MURPHY,

Plaintiff,

v.

KEVIN LAKEY,

Defendant.

Case No. 1:10-cv-00149-BLW

**ORDER ON MOTION FOR
DEFAULT**

Before the Court is Plaintiff's Motion for Entry of Default (Dkt. 28). The Court having considered the Motion and being familiar with the record will deny the Motion for reasons set forth below.

On October 5, 2011, the Court directed the Clerk of Court to issue a Summons and copy of the Amended Complaint (Dkt .9) to the U.S. Marshal to effect service on Defendant Kevin Lakey. *Order*, Dkt. 23. The Summons and Amended Complaint were served October 14, 2011, and advised Defendant that he must file an Answer within 60 days, or by November 4, 2011. *Summons*, Dkt. 25. Defendant filed an Answer (Dkt. 26) on November 16, 2011. On November 21, 2011, Plaintiff filed a Motion for Entry of Default (Dkt. 28), now before the Court.

Under Rule 55(a), "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and the failure is shown by affidavit or

otherwise, the clerk must enter the party's default." However, the Commentary to Rule 55's 2007 Amendments indicates that the courts have rejected this language where an intent to defend has been established. Here, such intent is established in the Defendant's filing of an Answer. The Court finds that the one time 12-day late filing does not justify entry of default in this case, and that an adjudication on the merits would best serve the interests of justice. Accordingly, the motion for default will be denied.

ORDER

IT IS ORDERED THAT Plaintiff's Motion for Entry of Default (Dkt. 28) is DENIED.



DATED: February 3, 2012

A handwritten signature in black ink that reads "B. Lynn Winmill". The signature is written in a cursive style and is positioned above a horizontal line.

B. Lynn Winmill

Chief Judge

United States District Court