

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

MARTY L. GRIGGS,

Plaintiff,

v.

HOWELL & VAIL, LLP., et al,

Defendants.

Case No. 2:10-CV-00646-EJL-MHW

**ORDER ADOPTING REPORT  
AND RECOMMENDATIONS**

On August 8, 2008, United States Magistrate Judge Mikel H. Williams issued a Report and Recommendation (Dkt. 45) in this matter. Pursuant to 28 U.S.C. § 636(b)(1), the parties had fourteen days in which to file written objections to the Report and Recommendation. No objections were filed by the parties, however Plaintiff filed a motion for default judgment against Ford Motor Credit Company (“Ford”) (Dkt. 46), an Affidavit of Competency (Dkt. 48) as well as a pleading entitled “Support of Summary Judgment” (Dkt. 48) wherein Plaintiff claimed the Magistrate Judge was in error and default judgment should be entered against Ford for failing to file an answer to her complaint.

**ORDER - 1**

In a second Report and Recommendation dated January 11, 2012 (Dkt. 50), Judge Williams set forth the law that allows a party to either file an answer or other responsive pleading. Judge Williams explained that the other responsive pleading filed by Ford was a motion to dismiss (Dkt. 8), so entry of default would be improper and recommended that Plaintiff's Motion for Default Judgment (Dkt. 46) be denied. No objections were filed to the second Report and Recommendation.

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court "may accept, reject, or modify, in whole or in part, the findings and recommendations made by the magistrate judge." Moreover, this Court "shall make a de novo determination of those portions of the report which objection is made." *Id.* In *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003), the court interpreted the requirements of 28 U.S.C. 636(b)(1)(C):

The statute [28 U.S.C. § 636(b)(1)(C)] makes it clear that the district judge must review the magistrate judge's findings and recommendations de novo if objection is made, but not otherwise. As the *Peretz* Court instructed, "to the extent de novo review is required to satisfy Article III concerns, it need not be exercised unless requested by the parties." *Peretz*, 501 U.S. at 939 (internal citation omitted). Neither the Constitution nor the statute requires a district judge to review, de novo, findings and recommendations that the parties themselves accept as correct. *See Ciapponi*, 77 F.3d at 1251 ("Absent an objection or request for review by the defendant, the district court was not required to engage in any more formal review of the plea proceeding."); see also Peretz, 501 U.S. at 937-39 (clarifying that de novo review not required for Article III purposes unless requested by the parties)

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*See also Wang v. Masaitis*, 416 F.3d 993, 1000 & n.13 (9th Cir. 2005). In this case, no objections were filed so the Court need not conduct a de novo determination of the Report and Recommendations. The Court did, however, review the Report and

Recommendations and the record in this matter and finds the Report and Recommendations to be well-founded in the law based on the facts of this particular case.

**THEREFORE, IT IS HEREBY ORDERED** that the Report and Recommendations (Dkt. 45 and 50) shall be **INCORPORATED** by reference and **ADOPTED** in their entirety.

**IT IS THEREFORE ORDERED:**

1. Defendant Ford Motor Credit Company's Motion to Dismiss (Docket No. 31) is **GRANTED**.
2. Defendant Howell & Vail's Motion for Summary Judgment (Docket No. 24) is **GRANTED**.
3. Plaintiff Griggs' Motion for Summary Judgment (Docket No. 27) is **DENIED**.
4. Plaintiff Griggs' Motion for Summary Judgment (Docket No. 36) is **DENIED**.
5. Defendant Ford Motor Credit Company be awarded reasonable fees and expenses from Plaintiff Griggs, incurred in responding to Griggs' Second Motion for Summary Judgment.
6. Plaintiff Griggs' Motion for Default Judgment for Defendant Ford Motor Credit Company (Dkt. 46) is **DENIED**.

**SO ORDERED.**



**DATED: January 31, 2012**

A handwritten signature in black ink that reads "Edward J. Lodge". The signature is written in a cursive style with a long horizontal flourish at the end.

Honorable Edward J. Lodge  
U. S. District Judge