

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**VICTOR WATKINS,**

**Plaintiff,**

**v.**

**JAMES NIELSON,**

**Defendant.**

**Case No. 08-cv-70-DRH**

**ORDER**

**HERNDON, Chief Judge:**

Presently before the Court is Plaintiff's Motion for Default Judgment (Doc. 16), which the Court construes as being made pursuant to **FEDERAL RULE OF PROCEDURE 55(b)**. While **Rule 55(b)** provides the procedural vehicle for obtaining a default *judgment* against a party, the moving party must first seek an *entry* of default from the Clerk of the Court against the party in default, pursuant to **Rule 55(a)**. In this case, Plaintiff attempted as much, filing a Motion for Entry of Default, pursuant to **Rule 55(a)** (Doc. 15). However, Magistrate Judge Frazier denied his Motion (Doc. 20), being unable to determine whether Defendant was, in fact, served; there was no return of service filed to show either the date service was made or a waiver of service.

Further, since Plaintiff's Motion for Entry of Default was denied,

Defendant has filed his Answer (Doc. 23), which the Court accepts as timely filed.<sup>1</sup> Because Defendant has now filed his Answer and also because “it is the policy of [the Seventh Circuit] to favor trials on the merits over default judgments.” ***Security Ins. Co. of Hartford v. Schipporeit, Inc.***, 69 F.3d 1377, 1381 (7th Cir. 1995) (citing ***C.K.S. Engineers, Inc. v. White Mountain Gypsum Co.***, 726 F.2d 1202, 1205 (7th Cir.1984)), Plaintiff’s Motion for Default Judgment (Doc. 16) is hereby **DENIED.**

**IT IS SO ORDERED.**

Signed this 29th day of October, 2008.

/s/ David R. Herndon  
**Chief Judge**  
**United States District Court**

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<sup>1</sup> On October 21, 2008, Defendant filed a Motion for Leave to File Answer (Doc. 22), explaining that although the docket reflected his Answer was due by 9/15/2008, because he did not execute the Waiver of Service until September 18, 2008, his Answer was actually not due until November 3, 2008. The Court granted Defendant’s Motion for Leave (Doc. 26).