

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

MERITA VILEN-BURCH,)	
<i>Plaintiff,</i>)	
)	
<i>vs.</i>)	1:13-cv-00216-JMS-TAB
)	
JERRY L. BURCH,)	
<i>Defendant.</i>)	

ORDER

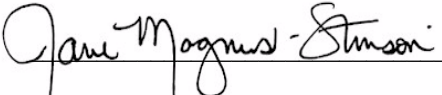
On April 8, 2013, Plaintiff Merita Vilen-Burch filed a Motion for Entry of Default based on Defendant Jerry Burch’s “failure to plead or otherwise defend as provided by the Federal Rules of Civil Procedure....” [Dkt. 18.] In support of her motion, Plaintiff submitted an affidavit from her counsel which stated that Mr. Burch was served with the Complaint, that he “has not pled, answered or otherwise defended,” and that “the time for [him] to answer, plead or otherwise defend has been extended by the Court through March 18, 2013, which date has passed without filing of a responsive pleading by [him].” [Dkt. 18-1.]

Fed. R. Civ. P. 55(a) provides that “[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.” Here, while Mr. Burch has not timely answered the Complaint, he has “defended” this action – through attendance at a March 8, 2013 telephonic status conference, [*see* dkt. 15 at 1 (“Plaintiff appeared by counsel and Defendant appeared in person March 8, 2013, for a telephonic status conference”)], and by filing a Motion for Extension relating to the due date for his Answer, [dkt. 16].

The Court finds that both of these actions demonstrate Mr. Burch’s intention to “defend” this matter and, accordingly, **DENIES** Ms. Vilen-Burch’s Motion for Entry of Default, [dkt. 18].

For clarity of the record, however, the Court **ORDERS** Mr. Burch to file an Answer to the Complaint by **April 22, 2013** so that the parties' positions are set forth in advance of the May 1, 2013 hearing. The Court also reminds the parties that any pre-hearing briefs shall be filed by April 24, 2013. [*See* dkt. 15 at 1.]

04/10/2013

A handwritten signature in black ink that reads "Jane Magnus-Stinson". The signature is written in a cursive style with a horizontal line underneath the name.

Hon. Jane Magnus-Stinson, Judge
United States District Court
Southern District of Indiana

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