

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF INDIANA
 INDIANAPOLIS DIVISION

MICHAEL CHALLMAN,)	
<i>Plaintiff,</i>)	
)	
<i>vs.</i>)	1:13-cv-00699-JMS-TAB
)	
HOVG, LLC, <i>doing business as</i> BAY AREA)	
CREDIT SERVICES, LLC,)	
<i>Defendant.</i>)	

ORDER

Presently pending before the Court is Plaintiff Michael Challman’s Verified Application for Entry of Default from Clerk, [dkt. 7]. In the Application, Mr. Challman states that his counsel provided Defendant HOVG, LLC (“HOVG”) with an “informal extension of time” of twenty-one days from the date HOVG’s Answer in this matter was originally due. [*Id.* at 1, ¶ 3.] Mr. Challman asserts that the extension made HOVG’s Answer due on June 13, 2013, but HOVG did not file its Answer by that date. [*Id.* at 1, ¶¶ 3-4.]

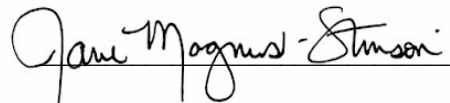
HOVG’s counsel entered appearances on June 14, 2013, [dkt. 8; 9], and responded to the Application on the same date, [dkt. 10]. In response, HOVG explains that it just retained counsel on June 14, 2013, and requested additional time – until June 19, 2013 – to file its Answer. [*Id.* at 1-2.]

Local Rule 6-1 provides for an automatic twenty-eight day extension for filing a response to a pleading, upon the filing of notice. Here, the parties’ agreement was for a twenty-one day extension. HOVG’s counsel appeared and sought more time to file HOVG’s Answer within the twenty-eight days contemplated by Local Rule 6-1, and the requested extension made HOVG’s responsive pleading still due within that initial twenty-eight day period. Additionally, the Seventh Circuit Court of Appeals favors a policy of “trial on the merits over default judgment.”

Cracco v. Vitran Express, Inc., 559 F.3d 625, 631 (7th Cir. 2009). For those reasons, the Court **DENIES** Mr. Challman's Verified Application for Entry of Default from Clerk, [dkt. 7].

The Court notes that HOVG's request for an extension of time, which is technically a motion, was contained in its response to Mr. Challman's Application. [Dkt. 10 at 2.] This practice violates Local Rule 7-1(a), which provides that "[m]otions must be filed separately, but alternative motions may be filed in a single paper if each is named in the title. A motion must not be contained within a brief, response, or reply to a previously filed motion, unless ordered by the court." The Court excuses HOVG's misstep, **GRANTS** the request for an extension to June 19, 2013, and **DIRECTS** the Clerk to docket HOVG's Answer to Complaint Seeking Damages for Violation of the Fair Debt Collection Practices Act (currently docketed as an exhibit to its response to the Application [dkt. 12]) as HOVG's Answer. However, the Court expects counsel to comply with the Local Rules going forward.

06/21/2013



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

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