

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DANIEL HORACEK,

Plaintiff,

vs.

DERRICK WILSON, *et al*,

Defendants.

Case No. 07-13822

Avern Cohn

United States District Judge

Michael Hluchaniuk

United States Magistrate Judge

REPORT AND RECOMMENDATION
PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT (Dkt. 60)

On August 20, 2008, plaintiff filed a request for the clerk to enter a default against defendant Derrick Wilson. (Dkt. 58). In his request, plaintiff asked the Court to serve his request on defendant Wilson because his address is sealed at this time. (Dkt. 58). Rather than serving the request for entry of default, the Clerk's Office entered the default on the same date. (Dkt. 59). On August 25, 2008, plaintiff moved for entry of default judgment against defendant Wilson. (Dkt. 60). On August 28, 2008, the undersigned entered an order setting aside the entry of default because it had not been served in accordance with Rule 5(a) and holding the motion for default judgment in abeyance, pending the proper entry of a default, following service of the request on defendant Wilson, in compliance with

Federal Rule 55(a) and Local Rule 55.1. (Dkt. 61).

On December 23, 2008, the U.S. Marshal's Service filed an unexecuted return of service as to defendant Wilson. (Dkt. 81, 82). Apparently, defendant Wilson no longer resides at the same address and the U.S. Marshal's Service is attempting to locate him and re-serve the notice of default. Thus, defendant Wilson has not yet been served with plaintiff's notice of default and no default is currently entered against defendant Wilson, which is required before default judgment may enter, in accordance with Federal Rule of Civil Procedure 55.

For the foregoing reasons, the undersign **RECOMMENDS** that plaintiff's motion for entry of default judgment be **DENIED WITHOUT PREJUDICE**.

The parties to this action may object to and seek review of this Report and Recommendation, but are required to file any objections within 10 days of service, as provided for in [28 U.S.C. § 636\(b\)\(1\)](#) and [Local Rule 72.1\(d\)\(2\)](#). Failure to file specific objections constitutes a waiver of any further right of appeal. [Thomas v. Arn](#), 474 U.S. 140 (1985); [Howard v. Sec'y of Health and Human Servs.](#), 932 F.2d 505 (6th Cir. 1981). Filing objections that raise some issues but fail to raise others with specificity will not preserve all the objections a party might have to this Report and Recommendation. [Willis v. Sec'y of Health and Human Servs.](#), 931 F.2d 390, 401 (6th Cir. 1991); [Smith v. Detroit Fed'n of Teachers Local 231](#), 829

F.2d 1370, 1373 (6th Cir. 1987). Pursuant to Local Rule 72.1(d)(2), any objections must be served on this Magistrate Judge.

Within 10 days of service of any objecting party's timely filed objections, the opposing party may file a response. The response must not exceed 20 pages in length unless such page limit is extended by the Court. The response must address specifically, and in the same order raised, each issue contained within the objections by motion and order. If the Court determines any objections are without merit, it may rule without awaiting the response to the objections.

Date: February 12, 2009

s/ Michael Hluchaniuk
Michael Hluchaniuk
United States Magistrate Judge

CERTIFICATE OF SERVICE

I certify that on February 12, 2009, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send electronic notification to the following: Rick J. Patterson and Steven M. Potter and I certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: Daniel Horacek, # 218347, 951 Indianwood Road, Lake Orion, MI 48362.

s/James P. Peltier
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