

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

## **MEMORANDUM AND ORDER**

This matter is before the Court on the Motion of Plaintiff Tracy Luttrell for Entry of Clerk's Default against Defendant Kenneth Peterson (Doc. No. 6) and the Motion of Defendant Kenneth Peterson to Set Aside Clerk's Entry of Default and Request for Extension of Time to File Answer to Plaintiff's Complaint (Doc. No. 10). As noted in Defendant's motion, Peterson's answer was due on February 12, 2014. Counsel for Peterson was first retained on February 14, 2014, and spoke with counsel for Plaintiff on February 17, 2014, requesting fourteen (14) additional days to respond to the complaint. Counsel for Plaintiff declined the request for additional time, and indicated he would be filing a motion for the clerk to enter default. No Clerk's Order of Default has been entered.

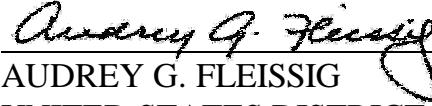
The Eighth Circuit has frequently endorsed the strong judicial policy against default judgments<sup>8</sup> and a judicial preference for adjudication on the merits. . . .<sup>9</sup> In *Oberstar v. F.D.I.C.*, 987 F.2d 494, 504 (8th Cir. 1993). Here, the Court notes that Defendant requested additional time to respond just five days after the response was due

and apparently before Plaintiff filed the motion for entry of default. The Court further notes that Plaintiff agreed to grant the co-defendant additional time to respond, and in his motion for entry of default does not assert that any undue prejudice will be suffered if default is not entered. Inasmuch as the case has only recently been filed, and the Court can discern no undue prejudice that Plaintiff will suffer should Defendant Peterson be allowed additional time to answer, Defendant's request for additional time shall be granted, and the motion for entry of an order of default shall be denied. The Court sees no just cause to prohibit Defendant from defending the case on the merits.

Accordingly,

**IT IS HEREBY ORDERED** that the Motion of Plaintiff Tracy Luttrell for Entry of Clerk's Default against Defendant Kenneth Peterson [Doc. No. 6] is **DENIED**.

**IT IS FURTHER ORDERED** that the Motion of Defendant Kenneth Peterson to Set Aside Clerk's Entry of Default and for Extension of Time to File Answer to Plaintiff's Complaint is **GRANTED in part and DENIED in part** as follows: Defendant's request for extension of time shall be **granted**, and Defendant Peterson shall have fourteen additional days, to and including **March 3, 2014**, to respond to the Complaint. Defendant's motion to set aside Entry of Default, is **Denied as moot**. [Doc. No. 10].

  
AUDREY G. FLEISSIG  
UNITED STATES DISTRICT JUDGE

Dated this 18<sup>th</sup> day of February, 2014.