

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

FILED
BILLINGS DIV.

2010 MAY 5 AM 10 26

PATRICK E. DUFTY, CLERK

BY _____
DEPUTY CLERK

KARL WAYNE GREEN,)
)
Plaintiff,)
)
vs.)
)
RAY H. HOOD, Secretary of)
Transportation,)
)
Defendant.)
_____)

CV-09-112-BLG-RFC

**ORDER ADOPTING FINDINGS
AND RECOMMENDATIONS OF
U.S. MAGISTRATE JUDGE**

On March 29, 2010, United States Magistrate Judge Carolyn Ostby entered Findings and Recommendation. Magistrate Judge Ostby recommends this Court construe Plaintiff's Motion for Summary Judgment against Defendant for Failure to Respond to Complaint (*Doc. 11*) as a Rule 55 Motion for Default and deny said motion.

Upon service of a magistrate judge's findings and recommendation, a party has 14 days to file written objections. 28 U.S.C. § 636(b)(1). In this matter, no party filed objections to the March 29, 2010 Findings and Recommendation. Failure to object to a magistrate judge's findings and recommendation waives all objections to the findings of fact. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1999). However, failure to object does not relieve this Court of its burden to

review de novo the magistrate judge's conclusions of law. *Barilla v. Ervin*, 886 F.2d 1514, 1518 (9th Cir. 1989).

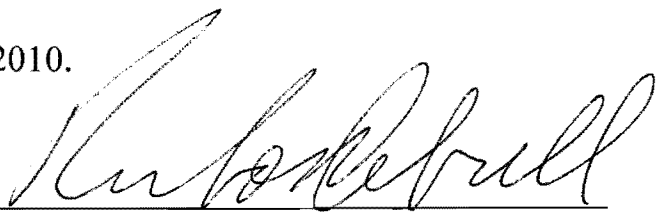
After an extensive review of the record and applicable law, this Court finds Magistrate Judge Ostby's Findings and Recommendation are well grounded in law and fact and adopts them in their entirety.

Default is not appropriate in that Rule 12 of the Federal Rules of Civil Procedure provides that the United States, United States agencies and United States officers and employees have 60 days after service to serve an answer to a complaint, counterclaim, or crossclaim. Fed.R.Civ.P. 12(a)(2) and (3). Plaintiff represents that his Complaint was served on January 26, 2010. Defendant's answer was filed on March 25, 2010, which is within the sixty day period.

Accordingly, **IT IS HEREBY ORDERED** Plaintiff's Motion for Summary Judgment against Defendant for Failure to Respond to Complaint (*Doc. 11*) is construed as a Rule 55 Motion for Default and **DENIED**.

The Clerk of Court shall notify the parties of the entry of this Order.

DATED the 5th day of May, 2010.


RICHARD F. CEBULL
UNITED STATES DISTRICT JUDGE