

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

WAYNE A. HUSSAR, II,

Plaintiff,

vs.

MSP WARDEN JAMES
SALMONSON and MSP'S
THORNTON R.N.,

Defendants.

CV 18-00055-H-DLC-JTJ

ORDER

Plaintiff Wayne Hussar, a state prisoner proceeding in forma pauperis and without counsel, has filed a Motion for Default and Default Judgment. (Doc. 15.) He contends that since counsel for Defendants could not initially contact Nurse Thornton, he is entitled to default judgment. Rule 55(a) of the Federal Rules of Civil Procedure provides, “[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.”

Although counsel was not able to initially contact Ms. Thornton (Doc. 12), on February 4, 2019, counsel filed both a waiver of service and Answer on behalf of Ms. Thornton. Defendants having timely filed an Answer to Mr. Hussar’s Amended Complaint (Doc. 14), there is no basis for entry of default.

ACCORDINGLY, IT IS HEREBY ORDERED THAT Mr. Hussar's Motion for Default and Default Judgment (Doc. 15) is DENIED.

DATED this 8th day of February, 2019.

/s/ John Johnston
John Johnston
United States Magistrate Judge