

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

STANFORD ALLEN LEWIS, JR,

Plaintiff,

vs.

EXTRADITION TRANSPORT OF
AMERICA,

Defendant.

CV 13-00138-M-DWM-JCL

ORDER

FILED

OCT 24 2013

Clerk, U.S. District Court
District Of Montana
Missoula

Pending before the Court is Plaintiff Stanford Lewis's Motion for Default Judgment. (Doc. 12). In an Order dated August 14, 2013 (Doc. 8), the Court concluded that Defendant Extradition Transport of America must make an appearance on Lewis's claims and directed the Clerk of Court to send Defendant a Request for Waiver of Service of Summons. Although Defendant did not respond to the request for waiver, the failure to respond to a request for a waiver is not a basis for default judgment. Defendant has not waived service of summons and therefore has not been served with process. Absent service, the Court has no jurisdiction over a defendant. *Action Embroidery Corp. v. Atlantic Embroidery, Inc.*, 368 F.3d 1174, 1177 (9th Cir. 2004). The Motion for Default Judgment will

be denied.¹

Given the failure to respond to the request for waiver of service, the Court will direct the United States Marshals Service to serve Defendant.

Based upon the foregoing, the Court issues the following:

ORDER

1. Plaintiff's Motion for Default Judgment (Doc. 12) is denied.
2. The Clerk of Court shall issue a summons to Defendant Extradition

Transport of America.

3. The Clerk of Court shall provide the following documents to the United States Marshals Service:

- * the Summons;
- * a copy of the Complaint (Doc. 2);
- * the Order of August 14, 2013 (Doc. 8);
- * this Order; and
- * a prepared USM-285 form.

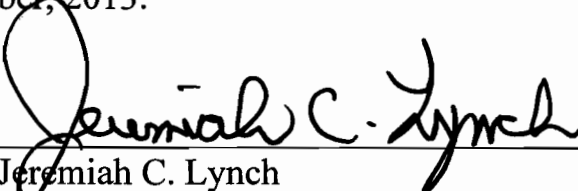
4. The United States Marshals Service or its designated agent shall personally serve Defendant Extradition Transport of America with the documents

¹Since the denial of entry of default judgment is not dispositive in this action, the Court shall proceed by order.

provided by the Clerk of Court to: Extradition Transport of America, L.L.C., 1450 University Avenue, Riverside, CA 92507; telephone number 951-682-7760. Service by certified mail is not sufficient. Service shall be made within ninety (90) days of the date of this Order. If service is not made within that time, the Marshals Service may request an extension of time to serve by filing an affidavit with the Court explaining the circumstances. If service is not possible, the Marshals Service shall file an affidavit with the Court explaining the circumstances. In either case, the Marshals Service shall serve a copy of any affidavit or request on Plaintiff Stanford Lewis, Missoula County Detention Facility, 2340 Mullan Road, Missoula, MT 59808.

5. At all times during the pendency of this action, Lewis SHALL IMMEDIATELY ADVISE the Court and opposing counsel of any change of address and its effective date. Failure to file a NOTICE OF CHANGE OF ADDRESS may result in the dismissal of the action for failure to prosecute pursuant to Fed.R.Civ.P. 41(b).

DATED this 29th day of October, 2013.


Jeremiah C. Lynch
United States Magistrate Judge