

PEARSON, J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

NATIONAL CREDIT UNION)	
ADMINISTRATION BOARD, <i>etc.</i> ,)	CASE NO. 1:10CV2505
)	
Plaintiff,)	
)	JUDGE BENITA Y. PEARSON
v.)	
)	
MARINAC, LLC, <i>et al.</i> ,)	<u>MEMORANDUM OF OPINION</u>
)	<u>AND ORDER</u>
Defendants.)	[Resolving ECF No. 95]

I. INTRODUCTION

Before the Court is the Report and Recommendation of Magistrate Judge William H. Baughman, Jr. ([ECF No. 95](#)) recommending that Cross-Claimant Petar Mlinac's Motion for Default Judgment ([ECF No. 84](#)) against Cross-Defendants Dragan Maric, Marinac, LLC, Meteor Company, Inc. be granted. For the following reasons, the Report and Recommendation is not adopted and the matter is recommitted to the Magistrate Judge, as explained herein.

II. DISCUSSION

On November 3, 2010, Plaintiff National Credit Union Administration Board ("Plaintiff"), as Liquidating Agent for the St. Paul Croatian Federal Credit Union initiated this lawsuit by filing a Complaint for Judgment on Promissory Notes and Other Equitable Relief ([ECF No. 1](#)) against Petar Mlinac, Marinac, LLC, Dragan Maric, Meteor Company, Inc., and Durda Maric. On November 18, 2010, Petar Mlinac answered the Complaint and filed a cross-claim against the remaining defendants. [ECF No. 12](#).

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On January 18, 2011, the above-entitled action was reassigned from Chief Judge Solomon Oliver, Jr. to the undersigned pursuant to [General Order 2011-4](#).

On March 16, 2011, Plaintiff, Petar Mlinac, and Durda Maric consented to the jurisdiction of Magistrate Judge William H. Baughman, Jr. [ECF No. 40](#). Thereafter, the case was transferred by the undersigned to Judge Baughman to provide a Report and Recommendation with respect to those claims involving parties who had not consented to the jurisdiction of the Magistrate Judge, and to excise jurisdiction over the remaining claims and parties. *See* Order of Reference ([ECF No. 41](#)).

On November 1, 2011, Petar Mlinac filed a Motion for Default Judgment against those Cross-Defendants—Dagan Maric, Marinac, LLC, and Meteor Company, Inc.—who did not consent to the Magistrate Judge’s jurisdiction. After a hearing on the motion was held ([ECF No. 92](#)), the Magistrate Judge submitted a Report and Recommendation ([ECF No. 95](#)) on November 28, 2011, recommending that the pending motion for default judgment be granted and that the Court enter judgment on Petar Mlinac’s motion in the form set forth in [ECF No. 95-1](#).

[28 U.S.C. § 636\(b\)\(1\)\(C\)](#) provides that the Court “may accept, reject, or modify, in whole or in part, the findings or recommendations” made by the Magistrate Judge and “recommit the matter” to the Magistrate Judge with instructions.

Having reviewed Magistrate Judge Baughman’s report, the Court declines to adopt the recommendation provided therein. Magistrate Judge Baughman’s recommendation was informed by his finding that the un-responsive Cross-Defendants had been properly served with

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process of the cross-claims, and had subsequently failed to appear, answer, plead or otherwise respond to the cross-claims within twenty-one days after service thereof. [ECF No. 95-1](#). The finding that the Cross-Defendants had been properly served is not supported by the record. Specifically, the record lacks any indication that Cross-Defendants Dragan Maric, Marinac, LLC, and Meteor Company, Inc. were served in accordance with [Fed. R. Civ. P. 4](#). See [Fed. R. Civ. P. 5\(a\)\(2\)](#) (“No service is required on a party who is in default for failing to appear. But a pleading that asserts a new claim for relief against such a party must be served on that party under Rule 4.”).

The Court therefore declines to adopt Magistrate Judge Bachman’s Report and Recommendation and recommits this matter to the Magistrate Judge to issue a second report and recommendation, once the record indicates that the Cross-Defendants have been properly served.

IT IS SO ORDERED.

January 26, 2012
Date

/s/ Benita Y. Pearson
Benita Y. Pearson
United States District Judge