

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

POWER PLAY MARKETING GROUP,)
INC.,)

CIV. 13-4087-KES

Plaintiff,)

vs.)

TREASURE TRANSPORTATION, INC.)
and US TRUCK DELIVERY, INC.,)

ORDER DENYING PLAINTIFF'S
MOTION FOR DEFAULT
JUDGMENT

Defendants,)

and)

TREASURE TRANSPORTATION, INC.,)

Third-Party Plaintiff,)

vs.)

AMAZON.COM, INC.,)

Third-Party Defendant.)

Plaintiff, Power Play Marketing Group, Inc., moves for a default judgment against defendant US Truck Delivery, Inc. pursuant to Rule 55(b)(1). Neither US Truck nor defendant Treasure Transportation, Inc. has responded to Power Play's motion for default judgment.

Federal Rule of Civil Procedure 55(b)(1) provides:

If the plaintiff's claim is for a sum certain . . . , the clerk—on the plaintiff's request, with an affidavit showing the amount due—must enter judgment for that amount and costs against a defendant who has been defaulted for not appearing[.]

Entry of default was filed by the clerk of court against US Truck on February 7, 2014.

Docket 14. US Truck has still not appeared. The issue, then, is whether a default judgment should be entered against US Truck.

As a general rule, “when one of several defendants who is alleged to be jointly liable defaults, judgment should not be entered against that defendant until the matter has been adjudicated with regard to all defendants, or all defendants have defaulted.” 10A Charles Alan Wright, Arthur Miller, Mary Kay Kane, Richard Marcus & Adam Steinman, *Federal Practice and Procedure* § 2690 (3d ed. 2014). See also *Westchester Fire Ins. Co. v. Mendez*, 585 F.3d 1183, 1189 (9th Cir. 2009) (“It has long been established that, where there are several defendants, the transgressions of one defaulting party should not ordinarily lead to the entry of a final judgment, let alone a judgment fatal to the interests of other parties.”) (citing *Frow v. De La Vega*, 82 U.S. 552, 554 (1872)). Power Play’s complaint appears to allege that US Truck and Treasure Transportation are jointly liable for the damages Power Play seeks. Docket 1 at 4. For this reason, the court finds it is the better practice to keep US Truck in default and not enter judgment against it until the matter is adjudicated with regard to all defendants. Accordingly, it is

ORDERED that plaintiff’s motion for default judgment (Docket 17) is denied without prejudice.

Dated July 10, 2014.

BY THE COURT:

/s/ Karen E. Schreier

KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE