

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

BERNARD D. SMITH,

Plaintiff,

vs.

Case No. 17-1171-JTM

MEDTRONICS, INC.,

Defendant.

MEMORANDUM AND ORDER

Plaintiff Bernard Smith, an inmate of El Dorado Correctional Facility, brought a *pro se* action in Butler County, Kansas District Court seeking damages for injuries due to a defective heart defibrillator manufactured by Medtronic, Inc. (Dkt. 1-1). The defendant removed the action to this court, and has filed a Motion to Dismiss. (Dkt. 12).

The matter is now before the court on Smith's Motion for Default Judgment. (Dkt. 10). Because it was submitted by mail, Smith's motion was filed nearly a week after Medtronic's motion to dismiss, and fails to mention the responsive pleading filed by Medtronic. The August 30, 2017 motion to dismiss was timely filed under the schedule adopted by the Magistrate Judge (Dkt. 6), and the defendant is not in default.

The court will address the motion to dismiss when the matter is fully briefed.

IT IS ACCORDINGLY ORDERED this 6th day of October, 2017, that plaintiff's Motion for Default Judgment (Dkt. 12) is hereby denied.

s/ J. Thomas Marten  
J. THOMAS MARTEN, JUDGE