

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

CALEB BOONE,)	
)	
Plaintiff,)	
)	
v.)	Case No. 21-1146-SAC-GEB
)	
CARL ARTHUR RANEY,)	
)	
Defendant.)	
_____)	

**NOTICE OF HEARING
AND ORDER TO SHOW CAUSE**

To Defendant Carl Arthur Raney:

On June 1, 2021, Plaintiff Caleb Boone initiated this case against Defendant Carl Arthur Raney for payment of unpaid legal fees and punitive damages related to what Plaintiff characterizes as promissory fraud. Both parties proceed pro se in this matter. As outlined in an earlier opinion, Plaintiff sought the Court’s assistance to complete service of process upon Defendant in Belize, Central America. (Mem. and Order, ECF No. 27.) The docket reflects personal service upon Defendant on August 26, 2021 (*id.*, citing ECF No. 10 at 2); although Defendant disputes the validity of said service. (*See* ECF Nos. 12, Answer, ECF No. 30.)

Regardless of whether service was technically valid—a topic on which the undersigned provides no opinion on at this time—there is no dispute that on September 16, 2021, Defendant voluntarily entered his appearance in this matter by filing a request by fax to extend his deadline to answer or otherwise respond to the Complaint. (ECF No. 12.) The

undersigned U.S. Magistrate Judge granted Defendant's motion and set his response deadline to October 8, 2021. (Order, ECF No. 13.) Said order was sent by regular mail and email to Defendant Raney to the addresses Defendant used and supplied in his faxed motion. (ECF Nos. 12, 13.)

After Defendant failed to file any response to the Complaint, on October 13, 2021, Plaintiff filed an application for clerk's entry of default, which was granted. (ECF Nos. 15, 16.) On January 3, 2022, Plaintiff filed a motion for default judgment with supporting memorandum. (ECF Nos. 17-18.) Following his initial motion for default judgment, Plaintiff filed corrected briefing (ECF Nos. 19, 20) and other procedural motions (ECF Nos. 21-25, 28). Senior District Judge Sam A. Crow summarily granted Plaintiff's motions to supplement and amend his prior filings (ECF Nos. 21, 23, 28) and denied without prejudice Plaintiff's motion (ECF No. 25) for order validating the service of his motion for default judgment, declining to issue an advisory ruling on the topic. (Mem. and Order, ECF No. 27; Order, ECF No. 29.) Judge Crow also referred the corrected motion for default judgment (ECF No. 19) to the undersigned Magistrate Judge to conduct all necessary hearings and issue a report and recommendation. (Order, ECF No. 29.)

After this referral and six months after entering his appearance in this matter, Defendant Raney filed his Answer to the Complaint on March 15, 2022, by fax to the District of Kansas Clerk's office. (ECF No. 30.) Defendant's fax cover sheet notes, "As a result of the ongoing covid restrictions in Belize, email will be the only reliable way for case related papers to be served." (*Id.*) Defendant's note authorizes the use of his email

address for service of “case related papers” in this action. (*Id.*) However, Defendant’s Answer does not supply any rationale or basis for Defendant’s six-month delay between seeking an extension to his answer deadline in September 2021 and filing his Answer in March 2022.

On March 28, 2022, Plaintiff filed a Motion to Strike Defendant’s untimely Answer. (Motion, ECF No. 32.) In his Motion, Plaintiff asks the Court to strike the Answer, or in the alternative, allow Plaintiff time to file briefing related to the analysis of whether Defendant should be provided relief from the entry of default. (*Id.*)

Although the Court has a “strong preference for the disposition of litigation on the merits,” and default judgments are generally disfavored when used as a penalty for delay and procedural errors,¹ Defendant has also failed to timely participate in this litigation. To address Defendant’s failure to timely respond to the Complaint, to discuss the current procedural posture of this case, and to address the pending motions, this matter is set for a **show cause and motions hearing on May 12, 2022 at 1:30 p.m. by Zoom videoconference.**

In addition to his required participation in this hearing, in light of Defendant’s failure to timely file his Answer and the previous entry of default the Court hereby **ORDERS Defendant Carl Arthur Raney, to show cause in writing** to the undersigned

¹ *Fid. State Bank, Garden City, Kan. v. Oles*, No. CIV. A. 89-1043-T, 1991 WL 105614, at *1 (D. Kan. May 23, 1991) (citing *Gulley v. Orr*, 905 F.2d 1383, 1386 (10th Cir.1990); *Pelican Prod. Corp. v. Marino*, 893 F.2d 1143, 1146 (10th Cir. 1990)) (“Because there is a strong preference for the disposition of litigation on the merits, default judgments are disfavored and should not be used merely as a penalty for delays in filing or other procedural errors.”).

U.S. Magistrate Judge on or before **April 29, 2022**, why she should not recommend to the District Judge that the Motion for Default Judgment (ECF No. 19) and Motion to Strike Defendant's Answer (ECF No. 32) be granted as sought by Plaintiff Boone.

Given Plaintiff's considerable briefing on the topic of default judgment (*see* ECF Nos. 17-20, 21-24, 25-26, 28) and the timeliness of Defendant's response to the Complaint (ECF Nos. 31, 32), **the Court does not anticipate additional briefing from Plaintiff** prior to this hearing.

The Clerk shall transmit a copy of this Order to Plaintiff Caleb Boone by U.S. Mail, and to Defendant Carl Arthur Raney by email to tauceo@yahoo.com (the address contained in his Answer) and also by registered mail international to 25 Santa Rita Heights, Corozal Town, Corozal District, Belize, Central America.

Defendant Raney is on notice that a failure to show cause in writing and/or a failure to appear as directed at the May 12, 2022 hearing, may result in sanctions, up to and including a recommendation that judgment be entered in favor of Plaintiff Boone.

IT IS SO ORDERED.

Dated this 29th day of March, 2022.

s/ Gwynne E. Birzer
GWYNNE E. BIRZER
United States Magistrate Judge