

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

KATHLEEN HERMAN and
JEFFREY GHIAZZA,

Plaintiffs,

v.

Case No.: 2:23-cv-948-JES-KCD

THE MR. COOPER GROUP INC.,

Defendant.

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ORDER

Plaintiffs Kathleen Herman and Jeffrey Ghiazza seek a Clerk’s default against Defendant the Mr. Cooper Group, Inc. (Doc. 73.) The motion is **DENIED** because Defendant has appeared and defended itself by filing a motion under Fed. R. Civ. P. 12(e). A Clerk’s default is not proper on such facts. *See, e.g., Wagner v. Potter*, No. 2:03CV511FTM-99DNF, 2006 WL 2935252, at *1 (M.D. Fla. Oct. 13, 2006) (denying motion for default where “the government appeared by filing a Rule 12(e) Motion for More Definite Statement”); *Montecalvo v. Brandon Auto Clinic, Inc.*, No. 8:07-CV-851-T-30MSS, 2007 WL 2155581, at *1 (M.D. Fla. July 26, 2007) (“The Rule does not contemplate the entry of default only upon a defendant's failure to answer, but rather upon a defendant's failure to respond or defend against the allegations in a complaint.

A Motion for more Definite Statement clearly is an attempt by Defendants to defend against the allegations in the Complaint.”).

ORDERED in Fort Myers, Florida on April 8, 2024.



Kyle C. Dudek
United States Magistrate Judge

Copies: All Parties of Record