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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 RANDY BERHOLTZ ,  
12 Plaintiff,  
13 v.  
14 P4 MEDITECH ANALYTICS, LLC, and  
15 PARIND PAREKH,  
16 Defendants.

Case No.: 3:20-cv-02507-WQH-AHG

**ORDER GRANTING IN PART  
PLAINTIFF’S MOTION TO  
CONDUCT DISCOVERY**

**[ECF Nos. 13, 17]**

17 Before the Court is Plaintiff Randy Berholtz’s (“Plaintiff”) Motion to Conduct  
18 Discovery. ECF Nos. 13, 17. Plaintiff seeks certain discovery from Defendants P4  
19 Meditech Analytics and Parind Parekh (collectively, “Defendants”) to inform his  
20 forthcoming motion for default judgment. *Id.* For the following reasons, the Court  
21 **GRANTS IN PART** Plaintiff’s motion.  
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23 **I. BACKGROUND**

24 On May 15, 2020, Plaintiff and Defendants entered into a consulting agreement in  
25 which Defendants agreed to pay Plaintiff \$12,500 per month for his services and a bonus  
26 of \$.01 for each Covid-19 test kit Defendants sold while Plaintiff was retained as a  
27 consultant. ECF No. 1 at ¶ 5; ECF No. 17-2 at 7. After Defendants failed to make payments  
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1 under the consulting agreement, the parties entered into a settlement agreement, where  
2 Defendants agreed to pay Plaintiff \$15,000 by October 27, 2020, and an additional \$18,250  
3 by October 31, 2020. ECF No. 17-2 at 9. Plaintiff retained “the right to disregard the terms  
4 of th[e] [settlement] [a]greement if the defendants breach any of its terms and commence  
5 legal action under the consulting agreement.” *Id.* at 10. After Defendant failed to make  
6 payments under the settlement agreement, on December 26, 2020, Plaintiff brought an  
7 action against Defendants for breach of contract and fraud, for failure to make payment  
8 under the consulting agreement. ECF No. 1. Plaintiff contends that he is currently owed  
9 \$32,500 for his monthly compensation, less \$9,500 already paid, plus the amount due for  
10 tests sold by Defendants. *Id.* at ¶¶ 7, 18.

13 On March 24, 2021, Defendant P4 Meditech Analytics executed a waiver of service  
14 (ECF No. 4), making its answer due on May 24, 2021. *See* ECF No. 5-2 at 1 (request sent  
15 on March 24, 2021); FED. R. CIV. P. 4(d)(3) (“A defendant who, before being served with  
16 process, timely returns a waiver need not serve an answer to the complaint until 60 days  
17 after the request was sent”); FED. R. CIV. P. 12(a)(1)(A)(ii) (“if service of the summons has  
18 been timely waived under Rule 4(d), within 60 days after the date when the request for  
19 waiver was sent”). On April 28, 2021, Defendant Parekh executed a waiver of service (ECF  
20 No. 7), making his answer due on June 28, 2021. *See* ECF No. 7 at 2 (request sent on  
21 April 27, 2021); FED. R. CIV. P. 4(d)(3); FED. R. CIV. P. 12(a)(1)(A)(ii); *see also* FED. R.  
22 Civ. P. 6(a)(1)(C) (“if the last day is a Saturday, Sunday, or legal holiday, the period  
23 continues to run until the end of the next day that is not a Saturday, Sunday, or legal  
24 holiday”). Neither defendant filed an answer to the complaint, and on July 17, 2021,  
25 Plaintiff requested that the clerk of court enter default. ECF Nos. 9, 10, 11; *see* FED. R. CIV.  
26 P. 55(a). On July 22, 2021, the clerk of court entered the default of each of the defendants.  
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1 ECF No. 12.

2 In his Motion to Conduct Discovery for Default Judgment, Plaintiff seeks an order  
3 from the Court permitting discovery on the issue of damages and extending the deadline to  
4 file his motion for default judgment by six months. ECF No. 13 at 2–3. Plaintiff contends  
5 that, though he estimates the amount due for tests sold is \$200,000 (*see* ECF No. 1 at ¶ 7),  
6 he needs discovery to establish the precise amount to which he is entitled. ECF No. 13 at  
7 2 (“plaintiff does not have sufficient information to determine the sales component of  
8 damages and needs to conduct discovery to ascertain that sum”); ECF No. 17 at 2  
9 (Defendants “failed to provide any accounting to Plaintiff of what sales they made during  
10 the relevant time period, and Plaintiff has no way of determining the compensation he is  
11 owed for the sales of products”). For example, though Plaintiff had been told that  
12 Defendants sold two million test kits and two million masks, Plaintiff represents that he  
13 has seen other documents referencing sales of 20 million boxes of gloves. ECF No. 17 at  
14 2. Thus, to adequately calculate damages, Plaintiff seeks discovery regarding Defendants’  
15 sales and revenue data, as well as Defendants’ financial account information, accounting  
16 records, and bank statements. *Id.* at 2–3.

## 17 **II. DISCUSSION**

18 Entering a default judgment is a two-step process. FED. R. CIV. P. 55(a)–(b); *see Eitel*  
19 *v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986). Prior to entry of default judgment, there  
20 must be an entry of default. *See* FED. R. CIV. P. 55. Upon entry of default, the factual  
21 allegations of the complaint, except those concerning damages, are deemed to have been  
22 admitted by the defaulting party. FED. R. CIV. P. 8(b)(6); *see Geddes v. United Fin. Grp.*,  
23 559 F.2d 557, 560 (9th Cir. 1977). After default has been entered, a motion for default  
24 judgment must be filed and “[t]he district court’s decision whether to enter a default  
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1 judgment is a discretionary one.” *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980);  
2 *Taylor Made Golf Co. v. Carsten Sports, Ltd.*, 175 F.R.D. 658, 660–61 (S.D. Cal. 1997)  
3 (“A defendant’s default does not automatically entitle plaintiff to judgment”); *see Starbuzz*  
4 *Tobacco, Inc. v. Addison Specialty Serv., Inc.*, No. 13-cv-1539-MMA-KSC, 2015 U.S.  
5 Dist. LEXIS 186331, at \*6–\*7 (S.D. Cal. July 29, 2015) (denying damages award when  
6 plaintiff had not moved for default judgment against a defendant after clerk’s entry of  
7 default). Pursuant to this district’s Civil Local Rules, a party must move for default  
8 judgment within 30 days of the entry of default. CivLR 55.1.<sup>1</sup>

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10 In the context of default judgment, “[i]t is well-established that a plaintiff must  
11 independently ‘prove-up’ the amount of damages sought in the complaint.” *Oakley, Inc. v.*  
12 *Moda Collections, LLC*, No. SACV-19-160-JLS-JCGx, 2016 WL 7495835, at \*2 (C.D.  
13 June 9, 2016). “The court may conduct hearings or make referrals ... when, to enter or  
14 effectuate judgment, it needs to: ... (B) determine the amount of damages; ... or (D)  
15 investigate any other matter.” FED. R. CIV. P. 55(b)(2); *but see* FED. R. CIV. P. 54(c) (“A  
16 judgment by default shall not be different in kind or exceed in amount that prayed for in  
17 the [complaint]”). Although a party “may not seek discovery from any source before the  
18 parties have conferred as required by Rule 26(f) ... [unless] authorized by these rules, by  
19 stipulation, or by court order,” *see* FED. R. CIV. P. 26(d)(1), “pursuant to the authority  
20 vested in Rule 26(d)(1) and Rule 55(b)(2), courts have allowed discovery on the issue of  
21 damages after the entry of default.” *Oakley*, 2016 WL 7495835, at \*2; *see, e.g., Twitch*

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26 <sup>1</sup> The Court notes that default was entered in this case on July 22, 2021 (ECF No. 12),  
27 making Plaintiff’s motion for default judgment due on August 23, 2021. CivLR 55.1 On  
28 August 18, 2021, however, the Court extended the deadline, to be “reset it in its order  
regarding the pending [discovery] motion.” ECF No. 14.

1 *Interactive v. Johnston*, No. 16-cv-3404-BLF, 2017 WL 1133520, at \*2–\*4 (N.D. Cal. Mar.  
2 27, 2017) (“Good cause [for discovery] may also exist in cases where a defendant has failed  
3 to appear, resulting in the entry of default against the defendant, and the plaintiff is in need  
4 of evidence to establish damages” because the plaintiff “ha[d] been prevented from  
5 participating in a Rule 26(f) conference and from obtaining discovery from Defendants”);  
6 *see generally Obeidallah v. Anglin*, No. 2:17-cv-720, 2018 WL 6715372, at \*2–\*5 (S.D.  
7 Ohio Dec. 21, 2018) (thoroughly describing many circuits’ approaches regarding pre-  
8 default judgment discovery, and permitting limited discovery to aid default judgment  
9 motion).

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11 In the instant motion, Plaintiff contends that he is entitled to actual damages incurred  
12 from Defendants’ failure to make payment under the consulting agreement and that he has  
13 no means of accurately calculating those damages. ECF No. 17 at 2. Specifically, Plaintiff  
14 argues he requires discovery to assess the true amount of damages incurred from the  
15 nonpayment of the \$.01 royalty for each test Defendants sold. ECF No. 13 at 2; ECF No.  
16 17 at 2. Courts have permitted limited discovery in analogous circumstances. *See, e.g.,*  
17 *Nutrition Distrib. LLC v. IronX LLC*, No. 17-cv-839-JLS-JMA, 2017 WL 4391709, at \*1–  
18 \*2 (S.D. Cal. Oct. 3, 2017) (collecting cases and permitting discovery to ascertain  
19 defendant’s profits and plaintiff’s damages for forthcoming default judgment motion);  
20 *Twitch Interactive*, 2017 WL 1133520, at \*2–\*4 (granting discovery related to defendant’s  
21 “alleged unlawful activities and the revenue generated by those activities” because it was  
22 “reasonably calculated to lead to evidence in support of a motion for default judgment and  
23 a request for damages [since plaintiff] cannot conduct traditional discovery as the  
24 [defendant] refused to participate in this action [and default had been entered]”); *Alstom*  
25 *Power, Inc. v. Graham*, No. 3:15-cv-174, 2016 WL 354754, at \*2–\*3 (E.D. Va. Jan. 27,  
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1 2016) (collecting cases and allowing the plaintiff to “engage in discovery limited to  
2 ascertaining the existence and amount of damages” for forthcoming default judgment  
3 motion in a trade secrets action involving breach of contract and breach of fiduciary duty  
4 claims); *see cf. CAO Lighting, Inc. v. Lights of Am., Inc.*, No. 5:20-cv-2367-AB-SP, 2021  
5 WL 3376936, at 5-6 (C.D. Cal. Apr. 8, 2021) (permitting limited discovery after default  
6 judgment was granted to determine the amount of damages); *Oakley*, 2016 WL 7495835,  
7 at \*7–\*8 (permitting limited discovery after default judgment was granted to support  
8 plaintiff’s request for injunctive relief and to ascertain the existence and amount of  
9 damages.).  
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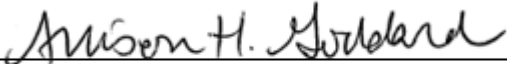
11 In light of the lack of information about Defendants’ sales and, therefore, Plaintiff’s  
12 damages, the Court agrees that limited discovery is warranted here. Good cause appearing,  
13 the Court **GRANTS IN PART** Plaintiff’s motion. However, the Court finds that four  
14 months, rather than the requested six months, will be sufficient to ascertain the true amount  
15 of damages. Plaintiff may conduct the discovery set forth in his supplemental briefing (*see*  
16 ECF No. 17 at ¶ 2) and must file his Motion for Default Judgment no later than  
17 **January 31, 2022.**  
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20 **III. CONCLUSION**

21 For the reasons set forth above, the Court **GRANTS IN PART** Plaintiff’s Motion to  
22 Conduct Discovery on the issue of damages. ECF Nos. 13, 17. Plaintiff must file his Motion  
23 for Default Judgment, in accordance with District Judge William Q. Hayes’s Civil Pretrial  
24 Procedures, no later than **January 31, 2022.**  
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26 **IT IS SO ORDERED.**

27 Dated: September 30, 2021

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Honorable Allison H. Goddard  
United States Magistrate Judge