

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION**

CHRISTOPHER HUBLER

PLAINTIFF

v.

Case No. 3:16-cv-107-KGB

**STRATEGIC STUDENT
SOLUTIONS LLC**

DEFENDANT

ORDER

Based on this Court's Final Scheduling Order, jury trial in this action is scheduled to begin June 19, 2017 (Dkt. No. 3). For the following reasons, the Court, *sua sponte*, removes the jury trial scheduled in this action from its trial calendar.

While the Clerk of Court has entered a default pursuant to Federal Rule of Civil Procedure 55(a), such entry does not amount to entry of default judgment pursuant to Rule 55(b)(1). Rule 55(b)(1) provides that the Clerk of Court may enter default judgment only when a plaintiff's claim is for a sum certain or a sum that can be made certain by computation as evidenced by "an affidavit showing the amount due." Fed. R. Civ. P. 55(b)(1).

Plaintiff Christopher Hubler did not present such an affidavit in his motion for entry of default (Dkt. No. 10). Thus, the Court does not construe the claim as establishing a "sum certain or a sum that can be made certain by computation." Fed. R. Civ. P. 55(b)(1). Because the Clerk of Court may not enter default judgment in favor of Mr. Hubler pursuant to Rule 55(b)(1), Mr. Hubler must apply to the Court for entry of default judgment. Fed. R. Civ. P. 55(b)(2).

Rule 55(b)(2) provides that the Court may conduct a hearing when it needs to determine the amount of damages in the event of an entry of default. The Court directs Mr. Hubler to present evidence of damages either by affidavit or at an evidentiary hearing pursuant to the terms of Rule 55(b)(2)(A)-(D). The Court acknowledges that defendant Strategic Student Solutions LLC

(“Strategic”) is an unrepresented party. Strategic does not appear to have an email address registered with CM/ECF. The Court directs the Clerk of Court to provide Strategic a copy of this Order *via* U.S. mail sent to Strategic’s address listed on CM/ECF.

The Court directs Mr. Hubler to indicate to the Court within 14 days from the entry of this Order whether he prefers to submit evidence of damages by affidavit or at an evidentiary hearing. If Mr. Hubler would prefer to submit proof through affidavit, then it should be done by submitting a formal filing to the Court. Alternatively, if Mr. Hubler would prefer an evidentiary hearing, then the Court would direct Mr. Hubler to communicate with the Court’s courtroom deputy regarding scheduling. The Court notes that, should an attorney enter an appearance on behalf of Strategic, then through counsel Strategic may demand that Mr. Hubler present evidence of damages not by affidavit, but instead at an evidentiary hearing, where any evidence of damages would be subject to cross-examination.

It is so ordered this the 9th day of June, 2017.



Kristine G. Baker
United States District Judge