

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

KOOL SMILES PC,	*	
	*	
Plaintiff,	*	
	*	
vs.	*	No. 4:10CV01166 SWW
	*	
DR. ERIC SHARKS,	*	
	*	
Defendant.	*	

ORDER

Plaintiff filed its complaint in this matter on August 24, 2010, alleging breach of contract, unjust enrichment, fraud, and conversion against defendant Dr. Eric Sharks. Plaintiff now has filed a request to the clerk for entry of default. Plaintiff states that Dr. Sharks was personally served on August 30, 2010, and the time for filing an answer to the complaint has expired. Therefore, the Clerk will be directed to enter a Clerk's Default in this matter pursuant to Rule 55(a) of the Federal Rules of Civil Procedure.

Plaintiff also filed a motion for default judgment pursuant to Rule 55(b)(2), requesting that the Court enter default judgment against Dr. Sharks for \$102,321.95 in damages, fees, and costs.¹ According to the certificate of service, plaintiff mailed a copy of the motion to defendant. Although Dr. Sharks has not made an appearance in this case, the Court finds that before a money judgment is entered against him, he should receive an opportunity to be heard on the issue of damages.² Accordingly, the Court will direct the Clerk to mail Dr. Sharks a copy of the motion and this Order.

¹Plaintiff seeks \$81,411.43 in compensatory damages, \$10,000.00 in punitive damages, \$910.52 in default interest, and \$10,000.00 in fees and costs.

²Because Dr. Sharks has defaulted, the factual allegations in the complaint, with the exception of damages, are taken as true.

IT IS THEREFORE ORDERED that the motion [docket entry 3] is granted in part. The Clerk is directed to enter a Clerk's Default in this matter pursuant to Fed.R.Civ.P. 55(a).

IT IS FURTHER ORDERED that defendant has up to and including fourteen (14) days from the date of entry of this Order to notify the Court if he desires to be heard on the issue of damages. Otherwise, the Court will enter judgment against Dr. Eric Sharks in the amount of \$102,321.95.

The Clerk is directed to mail a copy of this Order and the plaintiff's motion for default judgment with exhibits to Dr. Sharks by (1) regular mail and (2) certified mail, return receipt requested.

DATED this 7th day of December, 2011.

/s/Susan Webber Wright

UNITED STATES DISTRICT JUDGE