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JS-6

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

MERITUS PAYMENT SOLUTIONS, )  
INC., )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
FOR YOUR SMILES ONLY, LLC, et al., )  
 )  
Defendants. )  
\_\_\_\_\_)

CASE NO. CV 10-2170-R  
ORDER AND JUDGMENT

This action comes before the Court upon the entry of default against Defendant For Your Smiles Only, LLC on September 24, 2010, the entry of default against Defendant Patrick Terry on October 15, 2010, and Plaintiff’s October 28, 2010 motions for entry of default judgment against these two Defendants under Federal Rule of Civil Procedure 55(b)(2).

Plaintiff has complied with the procedural requirements of Federal Rule of Civil Procedure 55 and Local Rule 55-1. Furthermore, this Court has considered the factors enumerated in *Eitel v. McCool*, 782 F.2d 1470 (9th Cir. 1986), and determined that granting a default judgment is appropriate.

The facts alleged in the Complaint, taken as true, establish that Defendant Terry is liable

1 for conversion, fraud, and negligent misrepresentation. Plaintiff's requested relief is appropriate  
2 pursuant to the well-pleaded allegations in the Complaint. As such, judgment is entered against  
3 Defendant Terry in the amount of \$346,677.80. Plaintiff is entitled to post-judgment interest  
4 pursuant to 28 U.S.C. § 1961(a) "at a rate equal to the weekly average 1-year constant maturity  
5 Treasury yield, as published by the Board of Governors of the Federal Reserve System" for the  
6 calendar week preceding November 15, 2010. 28 U.S.C. § 1961. This interest shall accrue from  
7 November 15, 2010, until the date this Judgment is paid to Plaintiff.

8 Further, the facts alleged in the Complaint, taken as true, establish that Defendant For Your  
9 Smiles Only, LLC, breached the Merchant Agreement with Plaintiff. Plaintiff's requested relief is  
10 appropriate pursuant to the well-pleaded allegations in the Complaint. As such, judgment is  
11 entered against Defendant in the amount of \$632,372.58, consisting of \$285,694.78 for breach of  
12 contract and \$346,677.80 for conversion, fraud, and negligent misrepresentation.

13 Pursuant to Cal. Civil Code § 3289, Plaintiff is entitled to 10% prejudgment interest for its  
14 breach of contract damages, from March 25, 2010 until November 15, 2010.

15 Plaintiff is further entitled post-judgment interest pursuant to 28 U.S.C. § 1961 "at a rate  
16 equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of  
17 Governors of the Federal Reserve System" for the calendar week preceding November 15, 2010.  
18 28 U.S.C. § 1961. This interest shall accrue from November 15, 2010, until the date this  
19 Judgment is paid to Plaintiff.

20 It is further ordered that Plaintiff is not entitled to punitive damages and that Plaintiff is to  
21 bear its own costs.

22 IT IS HEREBY ORDERED that Judgment is entered against Defendants For Your Smiles  
23 Only, LLC, and Terry Patrick.

24 Dated: March 7, 2011.



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MANUEL L. REAL  
UNITED STATES DISTRICT JUDGE