

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

AJS WEIGHTLOSS, LLC,

Plaintiff,

v.

Case No: 2:13-cv-711-FtM-38DNF

MICHAEL S. ROSENTHAL and  
WAGNER, JOHNSTON &  
ROSENTHAL, P.C.,

Defendants/Third  
Party Plaintiffs

THIRD EYE MANAGEMENT AND  
MARKETING, INC.,

Third Party Defendant.

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**ORDER**<sup>1</sup>

This matter comes before the Court on Defendants and Third Party Plaintiffs' Response to Order to Show Cause ([Doc. 42](#)) filed on August 14, 2014.

Plaintiff AJS Weightloss, LLC sued Defendants Rosenthal and Wagner, Johnston & Rosenthal, P.C. (hereinafter "Rosenthal et al.") for breach of contract and professional negligence. ([Doc. 14](#)). Thereafter, Defendants and Third Party Plaintiffs Rosenthal et al. sued Third Party Defendant Third Eye Management and Marketing, Inc. (hereinafter

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“Third Eye”) for indemnification of the two claims brought against them. (See [Doc. 15, at 9](#)). Third Eye did not timely appear in the case. Consequently, a Clerk’s Entry of Default was entered against Third Eye. ([Doc. 28](#)). After the Clerk’s Entry of Default was entered, at least 60 days passed in which Rosenthal et al. did not move for a final default judgment against Third Eye pursuant to [Federal Rule of Civil Procedure 55\(b\)](#) and Local Rule 1.07(b). Therefore, the Court issued an Order to Show Cause as to why this case should not be dismissed as to Third Eye for failure to prosecute by seeking a final default judgment. ([Doc. 41](#)).

In response to the Order to Show Cause, Rosenthal et al. indicate they cannot obtain a final default judgment against Third Eye because the damages cannot be determined until the resolution of the primary action between AJS Weightloss, LLC and Rosenthal et al. Upon consideration, the Court agrees. That is, the Court finds it is appropriate to wait to enter a final default judgment against Third Eye until the primary action between AJS Weightloss, LLC and Rosenthal et al. is resolved. See [Vicenti v. Bakers Specialties, LLC, No. 8:13-cv-2399-T-33EAJ, 2013 WL 6511648, at \\*1 \(M.D. Fla. Dec. 12, 2013\)](#) (explaining that “[t]he mere entry of a default by the Clerk does not, in itself, warrant the Court entering a default judgment.”) (citation omitted); [North Pointe Ins. Co. v. Global Roofing & Sheet Metal, Inc., No. 6:12-cv-476-Orl-31TBS, 2012 WL 5378826, at \\*4 \(M.D. Fla. Sept. 4, 2012\)](#) (“Courts have interpreted [[Rule 55\(b\)\(2\)](#)] to mean that ‘when a default is entered against one defendant in a multi-defendant case, the preferred practice is for the court to withhold granting a default judgment until the trial of the action on the merits against the remaining defendants.’”) (citations omitted). Here, the indemnification claim against Third Eye is wholly dependent on the resolution of the

primary claim between AJS Weightloss, LLC and Rosenthal et al. Since the primary claim has not been resolved, the damages issue is outstanding with regard to all parties. There is a just reason to delay the entry of a final default judgment against Third Eye.

Accordingly, it is now

**ORDERED:**

Due to Defendants and Third Party Plaintiffs' Response to the Court's Order to Show Cause, ([Doc. 42](#)), and pursuant to [Federal Rule of Civil Procedure 55\(b\)](#) no further action is needed at this time with regard to the Court's Order to Show Cause ([Doc. 41](#)).

**DONE** and **ORDERED** in Fort Myers, Florida this 19th day of August, 2014.

  
SHERI POLSTER CHAPPELL  
UNITED STATES DISTRICT JUDGE

Copies: All Parties of Record