

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

LSCG FUND 19, LLC,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 5:13-CV-308 (MTT)
)	
OWEN PAINT & BODY, INC., et al.,)	
)	
Defendants.)	
)	

ORDER

Before the Court is the Plaintiff's motion for default judgment to recover amounts due pursuant to two promissory notes and guaranty agreements. (Doc. 5). The Plaintiff asserts no hearing is necessary to determine the amount of damages because they are for a "sum certain." It is true that a hearing is not necessary when damages are for a "sum certain." Fed. R. Civ. P. 55(b)(1). Nevertheless, Rule 55(b)(1) requires that a party seeking a default judgment from the Clerk for a "sum certain" submit an affidavit showing the amount due. Additionally, when damages are not for a sum certain, the Court may only enter a default judgment against a party without a hearing if there is sufficient evidence on the record for it to determine the amount of damages. See *S.E.C. v. Smyth*, 420 F.3d 1225, 1232 n.13 (11th Cir. 2005); see also Fed. R. Civ. P. 55(b)(2).

The only evidence of the amounts due is the Plaintiff's verified complaint. However, it is not possible for the Court to determine the source of the figures representing the amounts due or how they were calculated. The verification states

“some of the facts” were gathered from BB&T’s business records and that the “persons who prepared the Verified Complaint have indicated that it is true and accurate to the best of their recollection.” (Doc. 1 at 12). It ends by stating the facts are true and accurate based on “information and belief.” (Doc. 1 at 12). While a verified complaint may be treated as an affidavit in some contexts, the Court finds this verification is insufficient.

The Court defers ruling on the motion and **DIRECTS** the Plaintiff to submit a proper affidavit setting forth the amount of damages.¹

SO ORDERED, this 25th day of February, 2014.

S/ Marc T. Treadwell
MARC T. TREADWELL, JUDGE
UNITED STATES DISTRICT COURT

¹ Though there was an attorney affidavit submitted with the motion for default judgment, it references the verified complaint as its source for the amounts due. (Doc. 5-2).