

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

TOUCHSTONE, INC., doing business as)	
Earth Tones,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:14-cv-456-TWP-DML
)	
TELECARE, INC.,)	
)	
Defendant.)	

ENTRY ON APPLICATION FOR DEFAULT JUDGMENT

This matter is before the Court on Plaintiff Touchstone, Inc.'s Application for Entry of Default Judgment pursuant to Federal Rule of Civil Procedure 55(b). ([Filing No. 17](#)).

On August 1, 2014, the Clerk issued its Entry of Default, which was served on CT Corporation System, Registered Agent for Defendant Telecare, Inc. ([Filing No. 16](#)). Prior to that date, Plaintiff's counsel had served Defendant's president and its registered agent with the Request for Entry of Default by the Clerk ([Filing No. 13](#), [Filing No. 15](#)), at addresses shown on the certified records of the Indiana Secretary of State ([Filing No. 10 at ECF 1](#) and [Filing No. 10 at ECF 2](#)).

Plaintiff has submitted detailed and adequate verified documentation showing the service of process upon the Defendant. Defendant's due date to respond to the Complaint was April 17, 2014. Defendant has neither appeared nor responded to the Complaint. Defendant is a corporation. It is neither a minor nor an incompetent individual. Defendant is not in military service. As such, Plaintiff is entitled to a default judgment.

With respect to damages, Plaintiff has requested damages in the sum of \$413,870.00 in commissions earned as of March 5, 2014, as stated in its Verified Complaint ([Filing No. 1](#)), and Affidavit in Support of Request for Default Judgment ([Filing No. 17 at ECF 1](#)). Additionally,

Plaintiff seeks expenses for filing fee (\$400.00) and service of summonses (\$26.58). Although upon default the factual allegations of a complaint relating to liability are taken as true, those allegations relating to the amount of damages suffered are ordinarily not. *Dundee Cement Co. v. Howard Pipe & Concrete Products, Inc.* 722 F.2d 1319, 1323 (7th Cir. 1983). Further, “A judgment by default may not be entered without a hearing on damages unless...the amount claimed is liquidated or capable of ascertainment from definite figures contained in the documentary evidence or in detailed affidavits” *Id.* Plaintiff has submitted an affidavit which merely states that the amount of damages is “listed in the Verified Complaint at \$413,870.00 for commissions earned as of March 5, 2014” and attachments to the Complaint which do not explain how the commission amount is determined. Without more, the Court cannot ascertain the amount of damages to award.

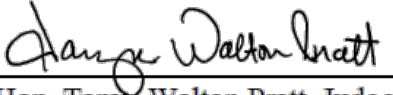
Accordingly, the Court **GRANTS** Plaintiff’s Motion, in part. Default Judgment is entered in favor of Plaintiff Touchstone, Inc., and against Defendant, Telecare, Inc. The expenses for filing fee (\$400.00) and service of summonses (\$26.58) are supported by the Court’s receipt ([Filing No. 17 at ECF 2](#)), and verified returns of summonses ([Filing No. 8](#), p. 2; [Filing No. 9](#), p. 2), therefore these fees are awarded. The contract between the parties allows for attorney’s fees to the prevailing party. ([Filing No. 1 at ECF 1](#)). Plaintiff has elected to forego the assessment of attorney’s fees for obtaining this default judgment, but has requested its right under the contract to seek fees for its collection efforts and this request shall be granted.

Plaintiff shall submit documentary evidence or detailed affidavit(s) to support its claim of \$413, 870.00 in damages within **thirty (30) days of the date of this Order**.

A final judgment of default shall issue once damages are determined.

SO ORDERED.

Date: 9/16/2014


Hon. Tanya Walton Pratt, Judge
United States District Court
Southern District of Indiana

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