

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

COURIE ROSE,

Plaintiff,

v.

Case No. 10-13238

LAW OFFICE OF W. THOMAS ENGLE PLLC,

Defendant.

**ORDER SETTING DATE FOR HEARING ON PLAINTIFF'S APPLICATION FOR
DEFAULT JUDGMENT AND DIRECTING SERVICE OF ORDER AND APPLICATION**

The court vacated the Clerk's entry of judgment by default on October 22, 2010, without prejudice to Plaintiff's application to the court for a default judgment, because Plaintiff's claim is not for a "sum certain" as is required by Federal Rule of Civil Procedure 55(b)(1). On November 23, 2010, the court ordered Plaintiff to show cause as to why the case should not be dismissed for lack of prosecution, as Plaintiff had not applied to the court for a default judgment pursuant to Rule 55(b)(2). On November 30, 2010, Plaintiff filed a document entitled "Default Judgment Under Rule 55(b)(2)," which the court will construe as an application for default judgment, and in which Plaintiff seeks a judgment in the amount of \$20,000, twice as much as was sought by Plaintiff in the request for Clerk's entry of judgment by default. Plaintiff attached to the application Plaintiff's affidavit, several obscured photographs of a digital telephone display that purport to be "examples" of the harassing phone calls at issue in this action, and a copy of 47 U.S.C. § 227(b)(3)(B). This filing, taken together with Plaintiff's previous request to the Clerk, is insufficient to establish the amount of damages to which Plaintiff is

entitled. The court will hold a Rule 55(b)(2) hearing in order to “determine the amount of damages” and “establish the truth of any allegation by evidence.” Fed. R. Civ. P. 55(b)(2)(B)-(C). Plaintiff’s counsel should come to the hearing prepared to present evidence in support of the amount of damages sought. Accordingly,

IT IS ORDERED that Plaintiff’s counsel is DIRECTED to appear for a hearing on the application for default judgment [Dkt. # 11] on **December 20, 2010, at 11:00 a.m.**

IT IS FURTHER ORDERED that Plaintiff’s counsel is DIRECTED to serve this order along with his document “Default Judgment Under Rule 55(b)(2)” [Dkt. # 11] on Defendant by **December 13, 2010**, and file not later than **December 16, 2010**, a proof of service explaining how such service was accomplished.

s/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: December 2, 2010

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, December 2, 2010, by electronic and/or ordinary mail.

s/Lisa G. Wagner
Case Manager and Deputy Clerk
(313) 234-5522