

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TERRY FABRICANT,

Plaintiff,

Case No. 23-cv-11111
Hon. Matthew F. Leitman

v.

DAVID ALLEN CAPITAL, INC.,

Defendant.

**ORDER REQUIRING PLAINTIFF TO SERVE
DEFENDANT WITH NOTICE OF HEARING**

In this action, Terry Fabricant alleges that Defendant David Allen Capital, Inc. (“DAC”) violated the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* when DAC made pre-recorded telephone calls to Fabricant and others. (*See* Compl., ECF No. 1.) Fabricant seeks injunctive relief and monetary damages on behalf of all persons injured by DAC’s conduct. (*See id.*)

No counsel has appeared for DAC in this case. Instead, on June 5, 2023, David Allen Rutz, the apparent owner of DAC, filed a motion to dismiss Fabricant’s complaint on DAC’s behalf. (*See* Mot. to Dismiss, ECF No. 8.) On November 20, 2023, the Court denied the motion to dismiss on the basis that, as a corporate entity, DAC cannot represent itself and/or be represented by a non-attorney and can only proceed in this action through licensed counsel. (*See* Order, ECF No. 12.) The Court

further ordered DAC to obtain counsel no later than January 8, 2024, and granted Fabricant the right to move for a default judgement should DAC fail to do so. (*See id.*)

As of the date of this order, no counsel has appeared for DAC. (*See Dkt.*) On January 10, 2024, Fabricant requested that the Court enter a default against DAC, and the Clerk of the Clerk entered that default on January 11, 2024. (*See Request, ECF No. 14; Default, ECF No. 15.*)

On February 9, 2024, Fabricant filed a motion for a default judgment against DAC. (*See Mot. for Default Judgment, ECF No. 9.*) Fabricant also filed a motion to certify a class. (*See Mot. to Certify, ECF No. 18.*) The Court has now issued a Notice of Hearing setting both of Fabricant's motions for a Zoom electronic hearing on **June 21, 2024, at 1:00 p.m.** (*See Notice of Hearing, ECF No. 19.*)

By no later than **June 13, 2024**, Fabricant shall serve DAC with (1) the Notice of Hearing, (2) this order, and (3) a proposed default judgment. In addition, by no later than **June 13, 2024**, Fabricant shall file a Certificate of Service on the docket confirming that he has served DAC with these documents. Finally, by no later than **June 13, 2024**, Fabricant shall submit the proposed default judgment to the Court through the Utilities function of CM/ECF.

IT IS SO ORDERED.

Dated: June 4, 2024

s/Matthew F. Leitman

MATTHEW F. LEITMAN
UNITED STATES DISTRICT JUDGE

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on June 4, 2024, by electronic means and/or ordinary mail.

s/Holly A. Ryan_____

Case Manager

(313) 234-5126