UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

DAWN GILLESPIE,	:	
	:	
Plaintiff,	:	**Hon. Joseph H. Rodriguez**
	:	
v.	:	Civil Action No. 14-7779
	:	
ACME MARKETS, INC. et al.,	:	
	:	**Opinion**
Defendants.	:	
	:	

This matter comes before the Court on a motion to enforce an agreement, between counsel for the parties, which sets forth a schedule for the payment of the award of attorneys' fees. On January 30, 2017, the Court awarded attorneys' fees in favor of Defendants' attorney Richard De Fortuna in the amount of $20, 952.20. [Dkt. No. 20] Plaintiff's counsel, Christopher Manganello, and Mr. De Fortuna agreed to a payment schedule for the remitter of the award of attorney's fees and memorialized that agreement in a Joint Schedule for Payment of Award of Counsel Fees (hereinafter "Joint Schedule") filed with the Court on March 6, 2017. [Dkt. No. 37].

Mr. De Fortuna states that Mr. Manganello has failed to pay under the terms of the agreement and moves for an Order holding that Plaintiff's

counsel Mr. Manganello is in breach of the fee agreement and demands a judgment for the remainder of the unpaid balance of the award of attorneys' fees.

In support of his motion, De Fortuna submitted a declaration on July 29, 2018, which sets forth Mr. Manganello's delinquencies and breach of his obligations under the terms of the Joint Schedule. [Dkt. No. 38]. Mr. Manganello's response to the motion was due on August 21, 2018. On September 4, 2018, Mr. Manganello filed a request for an extension of time to oppose the motion. [Dkt. No. 39]. The Court did not rule on Mr. Manganello's untimely request and notes that in the many months which have followed his request, Mr. Manganello has not submitted any response to the motion. As a result, the Court considers the motion unopposed. For the reasons stated below, Mr. De Fortuna's motion for breach of the Joint Schedule is granted.

I. **Background**

In his prosecution of the underlying labor dispute in this case, Mr. Manganello made numerous requests for extensions of time, submitted multiple filings after their deadlines had expired, and continued to pursue this action despite the fact that his client was able to return to Acme when she produced a doctor's note clearing her for employment. [Dkt. No. 8-10,

18]. The Court granted summary judgment in favor of Defendants and, because of the dilatory tactics and duplicitous handling of the case by Mr. Manganello, invited Acme to submit a motion for attorney's fees. During oral argument on the motion for attorneys' fees, the Court granted the motion and ordered the parties to submit a fee payment schedule to the Court [Dkt. No. 20, Order, Jan. 30, 2017].

Mr. Manganello and Mr. De Fortuna filed the executed Joint Schedule[1] on February 26, 2018. [Dkt. No. 37]. The Joint Schedule requires Mr. Manganello to remit the award of $20,952.20 to Mr. De Fortuna in twenty monthly payments of $1000 and one final payment of $952.20. The first payment was due on March 15, 2018, with every payment thereafter due the on 15th day of each month. De Fortuna Decl., Joint Schedule, para. 1, 2. Failure to make a timely payment constitutes a default and enables Mr. De Fortuna to immediately move for a judgment in the amount of "the remaining unpaid amount of the judgment[.]" Id. at para. 4. In addition, the Joint Schedule permits Mr. De Fortuna to seek any and all legal fees and expenses resulting from "any further efforts to enforce payment of the Court's initial January 30, 2017 Order, this joint schedule, or any

[1] Per the January 30, 2017 Order awarding attorneys' fees and paragraph 7 of the Joint Schedule, the Court retained jurisdiction over any issues arising out of the full satisfaction its Order awarding fees and costs.

subsequent order of the Court issued in connection with or furtherance of . . . Manganello's adherence to, compliance with, or default of this joint schedule." Id., para. 5.

According to Mr. De Fortuna, Mr. Manganello failed to make the first payment by March 15, 2018. Declaration of Richard J. De Fortuna, para. 8. Mr. De Fortuna declares that he received a payment of $1000 on or about March 22, 2018 and also received a payment of $1000 for the month of June 2018. Id. at para. 9, 12. However, Mr. De Fortuna has not received a payment from Mr. Manganello for the months of April 2018, May 2018, and all of the months following July 15, 2018. Id., para. 10, 13-14. For these reasons, Mr. De Fortuna argues that Mr. Manganello is in breach of the terms of the Joint Schedule and he seeks entry of judgment in the amount of $18,952.20, plus post-judgment interest and costs.

II. **Analysis**

The Joint Schedule provides an agreed upon timetable for the payment of the award of attorney's fees in regular, monthly installments. Joint Schedule, para. 4. Late payments trigger default and result in the "remaining unpaid amount of the judgment [becoming] immediately due and owing in its entirety as of the date of the default." Id., para. 4. The Joint

Schedule also provides that the breaching party shall pay "all legal fees and expenses" incurred the effort to enforce the Joint Schedule. Id., para. 5.

Mr. Manganello has submitted no justification for his failure to honor the Joint Schedule. The Court accepts Mr. De Fortuna's Declaration and finds that Mr. Manganello is in breach of the Joint Schedule. As a result, the Court will enter judgment against Mr. Manganello for the immediate payments of the unpaid balance in the amount of $18,952.20, plus post-judgment interest dating back to the Court's initial January 30, 2017 Order. Joint Agreement para. 4, 5. In addition, Mr. De Fortuna shall submit to the Court an affidavit detailing the fees and costs associated with present motion and an Order granting an award in that amount. Joint Schedule, para. 5.

III. **Conclusion**

For the reasons stated herein, Richard De Fortuna's motion for default and enforcement of the Joint Schedule is granted.

An appropriate Order shall issue.

Dated: March 14, 2019

s/ Joseph H. Rodriguez
Hon. Joseph H. Rodriguez,
UNITED STATES DISTRICT JUDGE