

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

GAN SHI LU,

Plaintiff,

v.

ANDREW WEINBERGER,

Defendant.

Civil Action No. 13-1837

OPINION

ARLEO, UNITED STATES DISTRICT JUDGE

This matter comes before the Court on the motion for default judgment pursuant to Federal Rule of Civil Procedure 55(b)(2) by Plaintiff Gan Shi Lu against Defendant Andrew Weinberger. For the reasons stated below, the motion is **GRANTED**.

I. BACKGROUND

Gan Shi Lu (“Plaintiff”) sues Andrew Weinberger (“Defendant”) for conversion of property, namely, Plaintiff’s Magic: The Gathering (“Magic”) card collection. Compl., Dkt. No. 1. Plaintiff has collected Magic cards since he was a child. Id. ¶ 7. The value of these cards grew over time, until Plaintiff amassed a collection which he values at \$280,000. Id. ¶ 32.

Plaintiff met Defendant for the purpose of trading Magic cards. Id. ¶ 8. The first five meetings, in New York City, went smoothly and led to exchanges worth between \$7,000 and \$20,000 each time. Id. ¶¶ 9-13. Subsequently, Defendant arranged a sixth meeting in Newark, New Jersey, and Plaintiff met Defendant there on May 9, 2012. Id. ¶¶ 14-15. After Plaintiff estimated the total value of his Magic cards for Defendant, they went to a nearby restaurant. Id.

¶¶ 15-6. After an hour at the restaurant, Defendant took all of Plaintiff's Magic cards, told Plaintiff he needed to call his girlfriend, and stepped outside. Id. ¶ 17. Defendant never returned. Id. ¶ 18.

That same day, Defendant flew to Tokyo with Plaintiff's Magic cards and sold a large portion of them for about \$100,000 without Plaintiff's authorization. Id. ¶¶ 19-20. Plaintiff subsequently filed a police report for theft. Id. ¶ 21. Defendant has not returned the cards or paid Plaintiff for them. Id. ¶ 22. Plaintiff now seeks damages of \$280,000 for theft of his Magic cards, as well as punitive damages, interest, and costs and attorneys' fees.

Plaintiff and Defendant both proceed *pro se*. Defendant filed two motions to dismiss and an answer and appeared in court on various occasions. Once discovery began, however, Defendant failed to reply to either discovery communications or court orders. Magistrate Judge Clark, after detailing Defendant's non-responsiveness in discovery, recommended that Defendant's answer be stricken and default be entered against Defendant. See Dkt. No. 37 at 1-3. Defendant's answer was stricken. See Dkt. No. 38. Following the Clerk's entry of default on May 21, 2014, Plaintiff brought his first motion for default judgment. Dkt. No. 45. This motion was terminated without prejudice by the Court for inclusion of various claims not alleged in the Complaint. Dkt. No. 50. Plaintiff then refiled the instant motion for default judgment without the additional claims. Dkt. No. 52. The motion is unopposed.

II. STANDARD OF REVIEW

"The district court has the discretion to enter default judgment, although entry of default judgments is disfavored as decisions on the merits are preferred." Animal Sci. Prods., Inc. v. China Nat'l Metals & Minerals Imp. & Exp. Corp., 596 F. Supp. 2d 842, 847 (D.N.J. 2008).

Before entering default judgment the court must: (1) determine it has jurisdiction both over the subject matter and parties; (2) determine whether defendants have been properly served; (3) analyze the Complaint to determine whether it sufficiently pleads a cause of action; and (4) determine whether the plaintiff has proved damages. See Chanel, Inc. v. Gordashevsky, 558 F. Supp. 2d 532, 535-36 (D.N.J. 2008); Wilmington Savings Fund Soc., FSB v. Left Field Props., LLC, No. 10-4061, 2011 WL 2470672, at *1 (D.N.J. June 20, 2011). Although the facts pled in the Complaint are accepted as true for the purpose of determining liability, the plaintiff must prove damages. See Comdyne I, Inc. v. Corbin, 908 F.2d 1142, 1149 (3d Cir. 1990).

Additionally, prior to granting default judgment, the Court must make explicit factual findings as to: (1) whether the party subject to the default has a meritorious defense; (2) the prejudice suffered by the party seeking default judgment; and (3) the culpability of the party subject to default. Doug Brady, Inc. v. N.J. Bldg. Laborers Statewide Funds, 250 F.R.D. 171, 177 (D.N.J. 2008).

III. ANALYSIS

A. Jurisdiction & Service

The Court has both subject matter jurisdiction over this dispute and personal jurisdiction over Defendant. Subject matter jurisdiction here is present pursuant to diversity under 28 U.S.C. § 1332. The Court also has personal jurisdiction over Defendant based upon his domicile within New Jersey. Plaintiff provided the Court with proof of service of Defendant at Defendant's home address in Livingston, New Jersey. See Aff. of Service, Dkt. No. 5. Thus, the Court is satisfied that it has jurisdiction to enter default judgment.

B. Liability

“A consequence of the entry of a default judgment is that the factual allegations of the complaint, except those relating to the amount of damages, will be taken as true.” Comdyne I, Inc. v. Corbin, 908 F.2d 1142, 1149 (3d Cir. 1990). The Complaint pleads facts which, taken as true, establish Defendant’s liability for conversion.¹

To plead conversion, Plaintiff must show “some repudiation by the defendant of the owner’s right, or some exercise of dominion over [the property] by [Defendant] inconsistent with such right, or some act done which has the effect of destroying or changing the quality of the chattel.” Potash Stores, Inc. v. Bay Dev. Corp., 118 N.J.L. 242, 244 (N.J. 1937); Arcand v. Brother Int’l Corp., 673 F. Supp. 2d 282, 311 (D.N.J. 2009). Plaintiff here pleads that Defendant took Plaintiff’s Magic cards, sold them in Japan, and refuses to repay Plaintiff or give him back his cards. Compl. ¶¶ 14-22. This effectively destroyed Plaintiff’s right to possession of his property and constitutes conversion.

C. Appropriateness of Default Judgment

Next, the Court must consider: (1) whether the party subject to the default has a meritorious defense; (2) the prejudice suffered by the party seeking default judgment; and (3) the culpability of the party subject to default. Doug Brady, 250 F.R.D. at 177. The Court concludes that in the absence of any responsive pleading and based upon the facts alleged in the Complaint, Defendant does not have a meritorious defense. Second, the Court finds that Plaintiff will suffer prejudice absent entry of default judgment as he would have no other means of obtaining relief. Finally, the Court finds the Defendant acted culpably as he has been served with the Complaint, is not an

¹ Plaintiff’s other causes of action—including fraud and unjust enrichment—would not alter the damages in this case, so the Court does not analyze the sufficiency of those pleadings.

infant or otherwise incompetent, and is not presently engaged in military service. See Nationwide Mut. Ins. Co. v. Starlight Ballroom Dance Club, Inc., 175 F. App'x 519, 523 (3d Cir. 2006) (holding that a defendant's failure to respond to communications from the plaintiff and the court can constitute culpability).

D. Monetary Damages

Although the facts pled in the Complaint are accepted as true for the purpose of determining liability, the plaintiff must prove damages. See Comdyne I, Inc. v. Corbin, 908 F.2d 1142, 1149 (3d Cir. 1990). Throughout this litigation, Plaintiff has submitted various exhibits to prove damages. See Pls.' Request to Proceed with Case, Dkt. No. 16; Pls.' Opp. to Mot. to Dismiss, Dkt. No. 20; Pls.' Mot. for Default J., Dkt. No. 45, Ex. 1; Pls. Disclosure Statement, Dkt. No. 48; Pls.' Mot. for Default J., Dkt. No. 52, Exs. 2-6. These exhibits include: 1) a list of the 958 cards stolen, 2) screenshots of email and website offers for various Magic cards, 3) screenshots of completed sales for various Magic cards, and 4) Apathy House's Experimental Price Looker-Upper's price tracking for various Magic cards.

After reviewing the exhibits to determine which cards have evidence of their value, the Court determines that there is evidence proving that at least \$186,269.12 of cards were stolen. See Appendix 1. This evidence includes actual sales and offers for sale on various websites, as well as price tracking data. Because Plaintiff is entitled to be made whole, he is entitled to the cost of replacement of his card collection. Both the actual sales and offers for sale and the price tracking data provide adequate proof of the cost of replacement for the cards identified as "Proof Available" in Appendix 1.

Plaintiff is entitled to prejudgment interest at the statutorily-provided rate under New

Jersey Court Rule 4:42-11(b); see In re Exxon Valdez, 484 F.3d 1098 (9th Cir. 2007) (federal courts sitting in diversity should apply state law regarding prejudgment interest unless federal law preempts it). Because this judgment exceeds the monetary limit of New Jersey's Special Civil Part, currently at \$15,000, the relevant interest rates are 2.5% for 2012 and 2.25% for 2013, 2014, and 2015. New Jersey law strongly disfavors compounding of interest. See N.J. Ct. R. 4:42-11(a) ("Except as otherwise ordered by the court or provided by law, judgments, awards and orders for the payment of money, taxed costs and counsel fees shall bear simple interest . . ."); see also Fendi Adele S.R.L. v. Burlington Coat Factory Warehouse Corp., 867 F. Supp. 2d 427, 437 (S.D.N.Y. 2012). The Court applied the relevant interest rate each year, beginning on May 9, 2012, and ending on August 10, 2015. After applying the resultant simple interest rates for each year to the \$186,269.12 of proven lost value, the Court determines that Plaintiff is entitled to \$15,156.69 of interest.

Plaintiff has thus provided adequate support pursuant to Federal Rule of Civil Procedure 55(b)(2) for damages of \$201,425.81, including \$186,269.12 of Magic cards and \$15,156.69 of prejudgment interest.² Judgment by default will be entered against Defendant in the amount of \$201,425.81.

IV. CONCLUSION

For the foregoing reasons, Plaintiff's motion for default judgment is GRANTED. An appropriate order accompanies this opinion.

Dated: August 10, 2015

/s/ Madeline Cox Arleo
United States District Judge

² Though Plaintiff alleges that he paid attorney fees of \$5,000 in this case before proceeding *pro se*, he provides no proof of these fees. The Court thus cannot enter judgment on Plaintiff's attorney's fees.

Appendix 1: Card Value and Proof

Name	Amount Each (\$)	Quantity	Total (\$)	Proof
Beta Volcanic Island	1507.00	12	18084.00	Proof Available
Beta Underground Sea	1625.75	8	13006.00	Proof Available
BGS 9.0 Beta Black Lotus	11500.00	1	11500.00	Proof Available
Beta Tropical Island	1211.00	8	9688.00	Proof Available
Beta Tundra	1200.26	8	9602.08	Proof Available
Japanese Foil Misty Rainforest	190.00	46	8740.00	Proof Available
Beta Taiga	900.00	8	7200.00	Proof Available
Beta Savannah	800.00	8	6400.00	Proof Available
Beta Bayou	700.99	8	5607.92	Proof Available
Beta Scrublands	700.00	8	5600.00	Proof Available
Beta Plateau	700.00	8	5600.00	Proof Available
Beta Badlands	600.00	8	4800.00	Proof Available
Japanese Foil Tarmogoyf	900.00	4	3600.00	Proof Available
Japanese Foil Dark Confidant	750.00	4	3000.00	Proof Available
Japanese Foil Flooded Strand	670.00	4	2680.00	Proof Available
Japanese Tarmogoyf	136.48	18	2456.64	Proof Available
Japanese Foil Jace The Mindsculptor	575.00	4	2300.00	Proof Available
Japanese Foil Wooded Foothills	500.00	4	2000.00	Proof Available
Tropical Island Revised	132.00	14	1848.00	Proof Available
Volcanic Island Revised	132.00	14	1848.00	Proof Available
Japanese Foil Tezzeret Agent of Bolas	110.00	16	1760.00	Proof Available
Japanese Foil Brainstorm	190.00	8	1520.00	Proof Available
FBB Tundra	365.11	4	1460.44	Proof Available
Japanese Foil Marsh Flat	90.00	16	1440.00	Proof Available
Japanese Foil Snapcaster Mage	200.00	7	1400.00	Proof Available
Japanese Foil Bloodstained Mire	325.00	4	1300.00	Proof Available
Unlimited Black Lotus	1275.00	1	1275.00	Proof Available
Japanese Foil Rishadan Port	250.00	5	1250.00	Proof Available
FBB Volcanic Island	305.00	4	1220.00	Proof Available
FBB Tropical Island	300.00	4	1200.00	Proof Available
Japanese Foil Sensei's Divining Top	550.00	2	1100.00	Proof Available
Russian Foil Liliana of the Veil	270.00	4	1080.00	Proof Available
Japanese Foil Arid Mesa	85.00	12	1020.00	Proof Available
Japanese Foil Tombstalker	200.00	5	1000.00	Proof Available
FBB Savannah	230.00	4	920.00	Proof Available
Japanese Foil Progenitus	230.00	4	920.00	Proof Available

Japanese Foil City Of Brass	170.00	5	850.00	Proof Available
Japanese Foil Goblin Welder	280.00	3	840.00	Proof Available
FBB Scrubland	202.50	4	810.00	Proof Available
FBB Taiga	200.00	4	800.00	Proof Available
Japanese Foil Sword of War and Peace	90.00	8	720.00	Proof Available
Korean Foil Snapcaster Mage	700.00	1	700.00	Proof Available
Japanese Foil Daze	130.00	5	650.00	Proof Available
FBB Bayou	160.00	4	640.00	Proof Available
Chinese Foil Scalding Tarn	80.00	8	640.00	Proof Available
Japanese Sword of Feast and Famine	160.00	4	640.00	Proof Available
FBB Badlands	150.00	4	600.00	Proof Available
Japanese Foil Grim Monolith	300.00	2	600.00	Proof Available
Japanese Foil Venser the Sojourner	50.00	12	600.00	Proof Available
Japanese Foil Bribery	150.00	4	600.00	Proof Available
Japanese Foil Batterskull	70.00	8	560.00	Proof Available
Japanese Foil Mutavault	180.00	3	540.00	Proof Available
FBB Plateau	130.00	4	520.00	Proof Available
Russian Foil Snapcaster Mage	500.00	1	500.00	Proof Available
Japanese Foil Tangle Wire	125.00	4	500.00	Proof Available
Japanese Foil Stoneforge Mystic	125.00	4	500.00	Proof Available
Japanese Foil Ilawán Cephalid Empress	120.00	4	480.00	Proof Available
Japanese Foil Phyrexian Metamorph	60.00	8	480.00	Proof Available
Chinese Foil Arid Mesa	60.00	8	480.00	Proof Available
Japanese Foil Gifts Ungiven	120.00	4	480.00	Proof Available
Japanese Foil Mental Misstep	60.00	8	480.00	Proof Available
Japanese Foil Entomb	120.00	4	480.00	Proof Available
Japanese Foil Orim's Chant	105.00	4	420.00	Proof Available
Guru Island	200.00	2	400.00	Proof Available
Force of Will German	100.00	4	400.00	Proof Available
Karakas	50.00	8	400.00	Proof Available
Chinese Foil Verdant Catacomb	50.00	8	400.00	Proof Available
Chinese Foil Marsh Flat	50.00	8	400.00	Proof Available
Japanese Foil Meddling Mage	50.00	8	400.00	Proof Available
Japanese Foil Pernicious Deed	100.00	4	400.00	Proof Available
Japanese Foil Standstill	100.00	4	400.00	Proof Available
Japanese Foil Damnation	100.00	4	400.00	Proof Available
Japanese Foil Unearth	50.00	8	400.00	Proof Available
Japanese Foil Green Suns Zenith	49.00	8	392.00	Proof Available
Japanese Foil Emrakul	90.00	4	360.00	Proof Available

Japanese Foil Verdant Catacombs	90.00	4	360.00	Proof Available
Japanese Foil Magnus of the Moon	90.00	4	360.00	Proof Available
Japanese Foil Vengevine	120.00	3	360.00	Proof Available
Japanese Foil Golgari Grave Toll	88.00	4	352.00	Proof Available
Japanese Foil Extriparte	85.00	4	340.00	Proof Available
Japanese Foil Spell Snare	85.00	4	340.00	Proof Available
Japanese Foil Dark Ritual	85.00	4	340.00	Proof Available
Japanese Foil Vindicate	170.00	2	340.00	Proof Available
Japanese Foil Kam Liberated	80.00	4	320.00	Proof Available
Japanese Foil Flagstones of Trokair	75.00	4	300.00	Proof Available
Japanese Foil Tryon Predator	150.00	2	300.00	Proof Available
Japanese Tolarian Academy	35.00	8	280.00	Proof Available
Japanese Foil Ensnaring Bridge	70.00	4	280.00	Proof Available
Japanese Foil Maelstrom Pulse	66.00	4	264.00	Proof Available
Japanese Foil Ichorid	130.00	2	260.00	Proof Available
Japanese Foil Sculpting Steel	130.00	2	260.00	Proof Available
Japanese Foil Jin Gitaxas Core Auger	43.00	6	258.00	Proof Available
Japanese Foil Grim Lavamancer	85.00	3	255.00	Proof Available
Guru Swamp	125.00	2	250.00	Proof Available
Japanese Foil Cursecatcher	40.00	6	240.00	Proof Available
English Foil Scalding Tarn	60.00	4	240.00	Proof Available
Japanese Iona Shield of Emria	80.00	3	240.00	Proof Available
Japanese Foil Reflecting Pool	58.00	4	232.00	Proof Available
Japanese Foil Gaddock Teeg	50.00	4	200.00	Proof Available
Japanese Foil Ponder	50.00	4	200.00	Proof Available
Japanese Foil Griselbrand	100.00	2	200.00	Proof Available
Japanese Foil Surgical Extraction	50.00	4	200.00	Proof Available
Japanese Foil Petrified Field	100.00	2	200.00	Proof Available
Japanese Foil Urborg Tomb of Yawgmoth	200.00	1	200.00	Proof Available
Japanese Foil Sorin Lord of Innistrad	100.00	2	200.00	Proof Available
Japanese Foil Zur the Enchanter	200.00	1	200.00	Proof Available
Japanese Foil Figure of Destiny	50.00	4	200.00	Proof Available
Japanese Foil Elesh Norn	90.00	2	180.00	Proof Available
Japanese Foil Duress 7th Edition	60.00	3	180.00	Proof Available
Japanese Foil Fact or Fiction	60.00	3	180.00	Proof Available
Russian Foil Geist of Saint Traft	172.00	1	172.00	Proof Available
Japanese Foil Doran Siege Tower	43.00	4	172.00	Proof Available
Judge Foil Maze of Ith	168.00	1	168.00	Proof Available
Japanese Sneak Attack	38.00	4	152.00	Proof Available

Japanese Foil Dismember	38.00	4	152.00	Proof Available
Japanese Foil Spell Pierce	50.00	3	150.00	Proof Available
Taiga Revised	70.00	2	140.00	Proof Available
Japanese Foil Kiki Jiki Mirror Breaker	140.00	1	140.00	Proof Available
Korean Tolarian Academy	135.00	1	135.00	Proof Available
Japanese Foil Noble Hierarchy	130.00	1	130.00	Proof Available
Japanese Polluted Delta	60.00	2	120.00	Proof Available
Japanese Foil Soothsaying	30.00	4	120.00	Proof Available
Japanese Foil Ponder	19.00	6	114.00	Proof Available
Japanese Foil Hive Mind	28.00	4	112.00	Proof Available
Japanese Foil Inquisition of Kozilek	27.50	4	110.00	Proof Available
Japanese Foil Time Stretch	35.00	3	105.00	Proof Available
Japanese Foil Stinkweed IMP	26.00	4	104.00	Proof Available
Japanese Foil Graftdigger's Cage	50.00	2	100.00	Proof Available
Japanese Foil Sword of Mind and Body	50.00	2	100.00	Proof Available
Japanese Foil Terravore	100.00	1	100.00	Proof Available
Japanese Foil Academy Ruins	100.00	1	100.00	Proof Available
Japanese Foil Creeping Tar Pit	25.00	4	100.00	Proof Available
Japanese Foil Gideon Jura	50.00	2	100.00	Proof Available
Japanese City of Traitors	48.00	2	96.00	Proof Available
Japanese Foil Gravecrawler	22.00	4	88.00	Proof Available
Japanese Foil Legacy Weapon	29.00	3	87.00	Proof Available
Korean Mana Vault	80.00	1	80.00	Proof Available
Mother of Runes Foil FNM	20.00	4	80.00	Proof Available
Japanese Foil Memarch	80.00	1	80.00	Proof Available
Geist of Saint Traft	26.00	3	78.00	Proof Available
Japanese Foil Ulamog Gyre	70.00	1	70.00	Proof Available
Japanese Foil Primeval Titan	60.00	1	60.00	Proof Available
Japanese Foil Thrun Last Troll	50.00	1	50.00	Proof Available
Japanese Foil Consecrated Sphinx	40.00	1	40.00	Proof Available
Japanese Foil Ancient Grudge	13.00	3	39.00	Proof Available
Ancient Tomb English	10.00	3	30.00	Proof Available
Korean Lotus Petal	10.00	3	30.00	Proof Available
Japanese Foil Mountain	12.50	2	25.00	Proof Available
FBB Underground Sea	407.76	4	1631.04	Proof Available
Japanese Foil Scalding Tarn	150.00	32	4800.00	Proof Available
Foil Intuition	70.00	3	210.00	Proof Available
Japanese Foil Kozilek Butcher of Truth	100.00	4	400.00	Proof Available
Beta Black Lotus	2000.00	2	4000.00	No Proof

BGS 9.5 Beta Ancestral Recall	2500.00	1	2500.00	No Proof
Unlimited Mox Sapphire	750.00	1	750.00	No Proof
English Show and Tell	44.00	4	176.00	No Proof
Japanese Foil Polluted Delta	825.00	4	3300.00	No Proof
Japanese Foil Windswept Heath	550.00	4	2200.00	No Proof
Chinese Foil Polluted Delta	350.00	4	1400.00	No Proof
Snapcaster Mage	25.00	83	2075.00	No Proof
English Tarmogoyf	120.00	7	840.00	No Proof
Mishra's Workshop	400.00	3	1200.00	No Proof
Library of Alexandria	300.00	5	1500.00	No Proof
English Dark Confidant	55.00	2	110.00	No Proof
Chinese Foil Misty Rainforest	110.00	12	1320.00	No Proof
English Foil Verdant Catacomb	42.00	8	336.00	No Proof
English Foil Arid Mesa	39.00	8	312.00	No Proof
English Foil Marsh Flats	32.00	4	128.00	No Proof
Chinese Foil Flooded Strand	300.00	1	300.00	No Proof
English Foil Dark Confidant	117.00	4	468.00	No Proof
English Jace Mindsculptor	66.00	4	264.00	No Proof
Japanese Jace Mindsculptor	85.00	1	85.00	No Proof
English Foil Polluted Delta	126.00	4	504.00	No Proof
Korean Intuition	70.00	1	70.00	No Proof
Bazaar of Baghdad	330.00	1	330.00	No Proof
Beta Nevinryals	190.00	1	190.00	No Proof
Entreat the Angels	25.00	2	50.00	No Proof
Cavern of Souls	32.00	6	192.00	No Proof
Maze of Ith Dark	45.00	6	270.00	No Proof
Japanese Foil Vedalkan Shackles	100.00	1	100.00	No Proof
Beta Lightning Bolt	35.00	4	140.00	No Proof
English Foil Misty Rainforest	78.00	12	936.00	No Proof
Japanese Foil Elspeth Knight Errant	225.00	3	675.00	No Proof

Total proven: \$186,269.12