

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

CHAMBERS OF  
ESTHER SALAS  
UNITED STATES DISTRICT JUDGE

MARTIN LUTHER KING  
COURTHOUSE  
50 WALNUT ST.  
ROOM 5076  
NEWARK, NJ 07101  
973-297-4887

May 22, 2018

**LETTER ORDER**

**Re: *Vincent John Albanese v. New Jersey Transit Rail Operations Inc.*  
Civil Action No. 17-5566 (ES) (SCM)**

Dear Counsel:

On May 18, 2018, the Clerk of Court entered default against the following Third-Party Defendant in this action: George T. Davis. Below, the Court sets forth the various factors that must be addressed in support of any *future* motion for default judgment.

“Before entering default judgment, the Court must address the threshold issue of whether it has personal jurisdiction and subject matter jurisdiction over the parties.” *Prudential Ins. Co. of Am. v. Bramlett*, No. 08-119, 2010 WL 2696459, at \*1 (D.N.J. July 6, 2010).

Further, “[b]efore granting a default judgment, the Court must determine (1) whether there is sufficient proof of service; (2) whether a sufficient cause of action was stated; and (3) whether default judgment is proper.” *Teamsters Health & Welfare Fund of Phila. & Vicinity v. Dubin Paper Co.*, No. 11-7137, 2012 WL 3018062, at \*2 (D.N.J. July 24, 2012) (internal citations omitted). And, to determine whether granting default judgment is proper, the Court must make factual findings as to: “(1) whether the party subject to default has a meritorious defense, (2) the prejudice suffered by the party seeking default, 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).

“A court does not accept as true allegations pertaining to the amount of damages.” *Days Inns Worldwide, Inc. v. Panchal*, No. 15-1459, 2015 WL 5055318, at \*2 (D.N.J. Aug. 25, 2015) (citation omitted). “While the court may conduct a hearing to determine the damages amount, Fed. R. Civ. P. 55(b)(2), a damages determination may be made without a hearing as long as the court ensures that there is a basis for the damages specified in the default judgment.” *Id.* (quotation marks and textual modifications omitted).

Finally, the Court notes that “if default is entered against some defendants in a multi-

defendant case, the preferred practice is for the court to withhold granting default judgment until the action is resolved on its merits against non-defaulting defendants: if plaintiff loses on merits, the complaint should then be dismissed against both defaulting and non-defaulting defendants.” *Animal Sci. Prods., Inc. v. China Nat’l Metals & Minerals Imp. & Exp. Corp.*, 596 F. Supp. 2d 842, 849 (D.N.J. 2008).

Accordingly, if moving for default judgment, the Court hereby orders Third-Party Plaintiff to submit a letter-brief (no more than 7 pages) with any materials in support of the default judgment motion—which specifically addresses each of the above factors in an organized, easy-to-read format using headings (and, if necessary, sub-headings) and numbered paragraphs or bullet points. To be sure, any such motion for default judgment must still comport with the requirements of this District’s Local Rule 7.1 (e.g., Notice of Motion)—except for Rule 7.1(d)(4).

As such, Third Party Plaintiff’s earlier filed motion for default judgment (*see* D.E. No. 20) is DENIED without prejudice because the Clerk of Court had not entered default when that motion was filed. *See, e.g., Husain v. Casino Control Comm’n*, 265 F. App’x 130, 133 (3d Cir. 2008).

The Clerk of Court shall terminate Docket Entry Number 20.

**SO ORDERED.**

*s/Esther Salas*  
**Esther Salas, U.S.D.J.**