

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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POWER UP LENDING GROUP, LTD.,

Plaintiff,

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

- against -

2:17-cv-4083 (DRH) (AKT)

PROTO SCRIPT PHARMACEUTICAL
CORP.,

Defendant.

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HURLEY, Senior District Judge:

Presently before the Court is the Amended Report and Recommendation of Magistrate Judge A. Kathleen Tomlinson, dated August 20, 2021 (the “Amended R&R” [DE 35]), recommending the Court grant Plaintiff Power Up Lending Group, Ltd.’s motion for default judgment and award Plaintiff \$305,250.00 in damages.¹ Judge Tomlinson concluded that (1) Virginia law governs Plaintiff’s substantive claim, (2) striking Defendant Proto Script Pharmaceutical Corp.’s Answer and entering a default judgment against it are appropriate sanctions pursuant to Federal Rule of Civil Procedure 37(b) given its failure to participate in this action since March 6, 2018, (3) Plaintiff established Defendant’s breach of contract, and (4) Plaintiff sought and demonstrated entitlement to \$305,250.00 in damages, representing 150%

¹ On July 9, 2021, Judge Tomlinson posted a Report and Recommendation that ended by recommending Plaintiff “be awarded damages in the sum of \$305,250.00, which shall continue to accrue interest at a default interest rate of 22% annually.” R&R at 17 [DE 33]. On August 20, 2021, Judge Tomlinson noted this phrase conflicted with the damages she calculated earlier in the R&R. The Amended R&R “reflect[s] that this phrase had been removed.” See Docket Entry to Amended R&R.

of the outstanding principal and a “significantly less” figure than that provided for under the contract’s plain terms and liquidated damages clause.

More than fourteen (14) days have passed since service of the Amended R&R and no objections have been filed. Pursuant to 28 U.S.C. § 636(b) and Federal Rule Civil Procedure 72, this Court has reviewed the Amended R&R for clear error. The Court finds none and concurs in the Amended R&R’s reasoning and result. The Court adds that post-judgment interest at the federal rate is “mandatory” under 28 U.S.C. § 1961(a) and accrues from the date of the entry of judgment until Defendant has satisfied the judgment. *Tru-Art Sign Co. v. Local 137 Sheet Metal Workers Int’l Ass’n*, 852 F.3d 217, 223 (2d Cir. 2017). Accordingly,

IT IS HEREBY ORDERED, the Plaintiff’s motion for default judgment is GRANTED and Plaintiff is awarded damages against Defendant Proto Script Pharmaceutical Corp. in the amount of \$305,250.00 and post-judgment interest at the federal rate.

The Clerk of Court is respectfully directed to enter judgment accordingly and to terminate the action.

SO ORDERED.

Dated: Central Islip, New York
September 8, 2021

s/ Denis R. Hurley _____
Denis R. Hurley
United States District Judge