

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION

NO. 4:07-CV-125-FL

CYNTHIA HARPER,)
)
Plaintiff,)
)
v.)
)
AMBUMED NC, INC.; AVETIS)
AVESYAN; and AMBUMED, INC.,)
)
Defendants.)

ORDER

This matter comes now before the court upon plaintiff's motion for entry of default and default judgment. (DE #24.) Defendants Ambumed NC, Inc. and Avetis Avesyan did not respond.¹ Pursuant to Rule 55 of the Federal Rules of Civil Procedure, Magistrate Judge David W. Daniel conducted evidentiary hearing in this matter on August 22, 2008. The magistrate judge subsequently issued Memorandum and Recommendation ("M&R"), wherein it was recommended that this court enter default against both defendants, but enter default judgment against only defendant Ambumed NC, Inc. (DE #29.) The magistrate judge recommends plaintiff be awarded \$2,158.84 in compensatory damages and \$6,476.52 in punitive damages, totaling \$8,635.36 against Ambumed NC, Inc. No objections to the M&R have been filed, and the period within which to file any objection has expired. The matter is ripe for ruling.

The court finds no error in the magistrate's recommendation that default be entered against

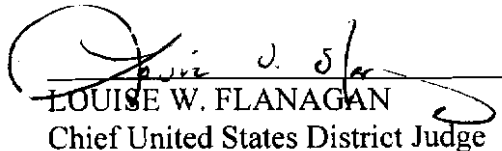
¹Defendant Ambumed, Inc. is involved in bankruptcy proceedings in the Central District of California, and this court accordingly entered a stay of all claims as against Ambumed, Inc. in this court. (DE #18.) Ambumed, Inc. is thus not subject of the instant order.

defendants Ambumed NC, Inc. and Avesyan. Accordingly, the court hereby ADOPTS that portion of the M&R, and the Clerk is directed to enter both parties' default.

The court notes the magistrate's finding that defendant Avesyan was not properly served with written notice of plaintiff's application for default judgment at least three days before the court's hearing. It appears from the docket, however, that defendant Avesyan was properly served with a certified copy of the magistrate judge's M&R.² In its discretion, the court hereby sets hearing as to default judgment against defendant Avesyan in accordance with Rule 55 of the Federal Rules of Civil Procedure, before the undersigned on December 18, 2008 at 9:00 a.m., at the United States Courthouse in New Bern, North Carolina. The court will not take any additional evidence from plaintiff at the hearing. Should defendant Avesyan fail to appear at the hearing, the court will enter default judgment in the amount recommended by the magistrate judge jointly and severally against defendants Avesyan and Ambumed NC, Inc.

The Clerk is directed to serve this order and a copy of plaintiff's motion for entry of default judgment (DE #24) on defendant Avesyan at the address listed in footnote two of this order, along with any other service that may be proper.

SO ORDERED, this the 8th day of December, 2008.


LOUISE W. FLANAGAN
Chief United States District Judge

²A certified copy of the M&R (DE #29) was served on defendant Avesyan via U.S. Mail at his address at 4465 Gould Ave., La Canada Flintridge, CA 91011-3522. This last known address for defendant Avesyan was provided in filing by counsel Stephen Dunn shortly following his withdrawal as attorney for defendant. (DE #19.)