

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**WOLF CREEK CONTRACTING
COMPANY, LLC,**

Plaintiff,

v.

Case No. 2:20-cv-6331

JUDGE EDMUND A. SARGUS, JR.

Magistrate Judge Kimberly A. Jolson

PCM CONTRACTING SERVICES LLC,

Defendant.

OPINION AND ORDER

On May 24, 2021, this Court granted Plaintiff Wolf Creek Contracting Company, LLC's Motion for Default Judgment. (ECF No. 9.) In that order, the Court ordered Plaintiff to submit evidence of damages within 14 days. On May 26, 2021, Plaintiff submitted an affidavit of damages with supporting documents and an affidavit of additional attorneys' fees. (ECF Nos. 10–11.)

I.

Plaintiff has established Defendant's liability for breach of the Subcontract and breach of the Credit Agreement. (Order Granting Default J. at 4, ECF No. 9.) As the Court discussed in its May 24, 2021 Order, Plaintiff's well-pleaded allegations established liability, but the company "must still establish the extent of damages." *Antoine v. Atlas Turner, Inc.*, 66 F.3d 105, 110 (6th Cir. 1995) (internal citations omitted). Rule 55(b)(2) provides that a district court "may" hold a hearing on a motion for default judgment when necessary to "conduct an accounting," or "determine the amount of damages." Fed. R. Civ. P. 55(b)(2). In other words, the Rule, "by its terms, allows but does not require the district court to conduct an evidentiary hearing." *Vesligaj v. Peterson*, 331 F. App'x 351, 354 (6th Cir. 2009) (citing *Fustok v. ContiCommodity Servs., Inc.*,

873 F.2d 38, 40 (2d Cir. 1989) (“[I]t was not necessary for the District Court to hold a hearing, as long as it ensured that there was a basis for the damages specified in a default judgment.”)).

Upon consideration of Plaintiff’s affidavits and the attached exhibits, a hearing is not necessary in this case. Under the Credit Agreement, Defendant owes Plaintiff an unpaid principal balance of \$110,024.03. (Offenberger Aff. ¶ 14, ECF No. 10; Credit Agreement, ECF No. 10-2; Payment Bond Claim, ECF No. 10-3; Unpaid Invoices, ECF No. 10-4.) Under the Credit Agreement, late charges accrue at 45 days 1.5% monthly, 18% annually. (Offenberger Aff. ¶ 12; Credit Agreement at 2.) Plaintiff is therefore entitled to \$110,024.03 in compensatory damages for the unpaid principal, plus pre- and post-judgment interest.

The Credit Agreement also specifies that “the customer hereby agrees to pay all costs of collection or legal fees should such action be necessary due to non-payment. (Credit Agreement at 2.) Thus, Plaintiff is also entitled to recover attorneys’ fees and costs. Regarding attorneys’ fees and costs, Plaintiff submitted an affidavit from Counsel Daniel Corcoran detailing Plaintiff’s fees and costs. (First Corcoran Aff., ECF No. 8-1.) Plaintiff also submitted a second affidavit from Counsel Daniel Corcoran following this Court’s order directing Plaintiff to submit evidence of damages. (Second Corcoran Aff., ECF No. 11.) Taken together, Plaintiff’s Counsel’s affidavits establish that Plaintiff is entitled to a total of \$34.30 in expenses, costs of this action, including \$402.00 in filing fees, and reasonable attorneys’ fees in the amount of \$4,303.00, which this Court finds to be fair and reasonable. (First Corcoran Aff. ¶¶ 3–8; Second Corcoran Aff. ¶¶ 3–5.)

II.

For the foregoing reasons, the Court **DIRECTS** the Clerk to **ENTER JUDGMENT** in favor of Plaintiff Wolf Creek Contracting Company, LLC against Defendant PCM Contracting Services LLC in the amount of \$110,024.03, plus pre- and post-judgment interest from May 5,

2020 at the rate of 18% per annum, plus expenses in the amount of \$34.30, plus costs of this action, including filing fees in the amount of \$402.00, plus attorneys' fees in the amount of \$4,303.00.

IT IS SO ORDERED.

6/7/2021
DATE

s/Edmund A. Sargus, Jr.
EDMUND A. SARGUS, JR.
UNITED STATES DISTRICT JUDGE