

United States District Court
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

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| METROPCS, a brand of T-MOBILE USA, | § | |
| Inc., a Delaware Corporation | § | |
| | § | |
| V. | § | CASE NO. 4:16-CV-283 |
| | § | Judge Mazzant |
| | § | |
| MYNEXTCELLULAR, LLC, a Texas | § | |
| Limited Liability Company; ELTON CHAU; | § | |
| and ANUJ SHAH | § | |

MEMORANDUM OPINION AND ORDER

Pending before the Court is Plaintiff's Motion for Entry of Default Against Defendants Elton Chau and Anuj Shah (Dkt. #29). Having considered the relevant pleadings, the Court finds the motion should be denied.

On May 2, 2016, Plaintiff filed a Complaint for Damages and Injunctive Relief against Defendants. On December 21, 2016, Plaintiff filed a Motion for Entry of Default Against Defendants Elton Chau and Anuj Shah pursuant to Fed. R. Civ. P. 55(b)(2) (Dkt. #29).

Rule 55 of the Federal Rules of Civil Procedure sets forth certain conditions under which default may be entered against a party, as well as the procedure to seek the entry of default judgment. Fed. R. Civ. P. 55. The Fifth Circuit requires a three-step process for securing a default judgment. *New York Life Ins. Co. v. Brown*, 84 F.3d 137, 141 (5th Cir. 1996). First, a default occurs when a defendant has failed to plead or otherwise respond to the complaint within the time required by Rule 12 of the Federal Rules of Civil Procedure. Fed. R. Civ. P. 55(a); *New York Life Ins.*, 84 F.3d at 141. Next, an entry of default may be entered by the clerk when the default is established by affidavit or otherwise. Fed. R. Civ. P. 55(a); *New York Life Ins.*, 84 F.3d at 141. Third, a plaintiff may then apply to the clerk or the court for a default judgment after an entry of default. Fed. R. Civ. P. 55(b); *New York Life Ins.*, 84 F.3d at 141.

In this case, Plaintiff has not requested a Clerk's Entry of Default. Instead, Plaintiff filed a Motion for Entry of Default pursuant to Rule 55(b)(2) (a default judgment entered by the court).¹ Based upon these facts, Plaintiff is not entitled to default judgment at this time as there has been no request for Clerk's Entry of Default.

It is therefore **ORDERED** that Plaintiff's Motion for Entry of Default Against Defendants Elton Chau and Anuj Shah (Dkt. #29) is hereby **DENIED**.

SIGNED this 4th day of April, 2017.


AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE

¹ The Magistrate Judge originally denied this motion. However, the Magistrate Judge did not have jurisdiction to deny a motion for default judgment.