
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

SOLUTIONSTREAM, a Utah limited liability
company,

Plaintiff,

v.

3D FOOTPRINTS, an Oregon corporation,

Defendant.

**MEMORANDUM DECISION AND
ORDER DENYING [14] MOTION FOR
DEFAULT ON COUNTERCLAIMS**

Case No. 2:17-cv-00605-DN

District Judge David Nuffer

In responding to the complaint by plaintiff SolutionStream, defendant 3D Footprints¹ asserted counterclaims with its answer.² The counterclaims were filed June 15, 2017. After more than seven months, SolutionStream had not filed a response to the counterclaims, although both parties participated in the litigation, including an attorneys planning meeting, in the interim. 3D Footprints has filed a Motion for Entry of Default (the “Motion”).³ Just before the Motion was filed, on the same day, SolutionStream filed its Reply to Counterclaim.⁴ The Motion can be resolved without a response from SolutionStream.

Applying Rule 55(a) of the Federal Rules of Civil Procedure, the Motion is denied. Rule 55(a), the rule governing entry of default, provides: “When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by

¹ The defendant contends that Cropper Medical, Inc. is the proper party in interest and that 3D Footprints is a DBA. For convenience, the defendant is referred to as “3D Footprints.”

² Answer by Cropper Medical, Inc. to Complaint, Affirmative Defenses and Counterclaims, [docket no. 4](#), filed June 15, 2017.

³ [Docket no. 14](#), filed February 5, 2018.

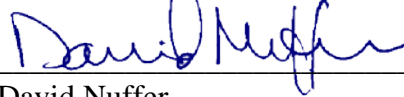
⁴ [Docket no. 12](#), filed February 5, 2018.

affidavit or otherwise, the clerk must enter the party's default."⁵ At the time the Motion was filed, SolutionStream had not "failed to plead or otherwise defend."⁶ SolutionStream no doubt was alerted to the need to file its response by 3D Footprints' mistaken filing of a motion for default judgment—which must be preceded by entry of default under Rule 55. In any case, a default would not serve the purpose of Rule 55 here, where SolutionStream is actively litigating the case and a response to the counterclaims is now in the record.

THEREFORE, IT IS HEREBY ORDERED that the Motion⁷ is DENIED.

Dated February 14, 2018.

BY THE COURT:



David Nuffer
United States District Judge

⁵ Fed. R. Civ. P. 55(a).

⁶ *Id.*

⁷ [Docket no. 14](#).