

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

WALTER G. FORD, and
ANNA FORD,

Plaintiffs,

v.

No. 1:11-cv-01237-JDB-egb

ESTATE OF TOMMIE R. YOUNGER
and KEVIN YOUNGER,

Defendants.

REPORT AND RECOMMENDATION

Before the Court is the motion of the Plaintiffs, Walter G. Ford and Anna Ford, for default judgment against Defendants, the Estate of Tommie R. Younger and Kevin Younger. (D.E. 7) Defendants have not responded. On November 15, 2011, Clerk's entry of default was made. (D.E. 9) Subsequently, Averitt Express, Inc.'s Motion to Intervene was granted, and a bankruptcy stay was ordered, which was lifted on October 2, 2013.

ANALYSIS

If a defendant fails to plead or defend as required by the Rules, the clerk or judge may enter default upon a plaintiff's request. Rule 55(a); *Shepard Claims Service, Inc. v. William Darrah & Associates*, 796 F.2d 190, 194 (6th Cir. 1986) (When a defendant fails to file a responsive answer, he is in default, and an entry of default may be made by either the clerk or the judge.). Then, if no hearing is needed to ascertain damages, judgment by default may be entered. Rule 55(b); *United Coin Meter Co., Inc. v. Seaboard Coastline RR.*, 705 F.2d 839, 844 (6th Cir. 1983) (*citing Meehan v. Snow*, 652 F.2d 274 (2d Cir. 1981)).

When a court determines that a defendant is in default, the factual allegations of the complaint, except those relating to the amount of damages, will be taken as true. *Geddes v. United Financial Group*, 559 F.2d 557, 560 (9th Cir. 1977); Fed. R. Civ. P. 8(d); Wright, Miller & Kane, *Federal Practice and Procedure: Civil 2d* 2688. Therefore, after receiving a default, a plaintiff must still establish the extent of damages to which he is entitled. *Kelley v. Carr*, 567 F. Supp. 831, 841 (W.D. Mich.1983). However, if the damages sought by the plaintiff are a sum certain or a sum that can be made certain by computation, judgment will generally be entered for that amount without an evidentiary hearing. Wright, Miller & Kane, *Federal Practice and Procedure: Civil 2d* 2688.

In this case, as previously stated, Defendants are in default and Entry of Default has been made. Damages are not of a sum certain. Accordingly, the Magistrate Judge recommends that an order granting default judgment be entered, and that the District Court Judge then refer the matter of damages to the Magistrate Judge for a hearing.

Respectfully Submitted,

s/Edward G. Bryant
UNITED STATES MAGISTRATE JUDGE

Date: February 21, 2014

ANY OBJECTIONS OR EXCEPTIONS TO THIS REPORT AND RECOMMENDATIONS MUST BE FILED WITHIN FOURTEEN (14) DAYS AFTER BEING SERVED WITH A COPY OF THE REPORT AND RECOMMENDATIONS. 28 U.S.C. § 636(b)(1). FAILURE TO FILE THEM WITHIN FOURTEEN (14) DAYS MAY CONSTITUTE A WAIVER OF OBJECTIONS, EXCEPTIONS, AND ANY FURTHER APPEAL.