

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**GRADY MEMORIAL HOSPITAL  
CORPORATION and LAW  
OFFICES OF RONALD I.  
KAPLAN, MD, LLC,**

**Plaintiffs,**

**v.**

**SMITH DESIGN STUDIOS, LLC,**

**Defendant.**

**CIVIL ACTION FILE**

**NO. 1:23-CV-5670-MHC**

**ORDER**

This matter is before the Court on Plaintiffs Grady Memorial Hospital Corporation and Law Offices of Ronald I. Kaplan, MD, LLC (collectively, “Plaintiffs”)’s Motion for Default Judgment [Doc. 14] against Defendant Smith Design Studios, LLC.

**I. PROCEDURAL BACKGROUND**

Plaintiffs filed their Complaint for Damages and Injunctive Relief (“Compl.”) on December 11, 2023. Compl. [Doc. 1]. The clerk issued a Summons to Defendant on December 12, 2023. Summons [Doc. 5]. On

Summons to Defendant on December 12, 2023. Summons [Doc. 5]. On December 13, 2023, Plaintiffs served Defendant's registered agent. Return of Service [Doc. 9]. Defendant failed to file an Answer to the Complaint within twenty-one days of service, and the Clerk of Court entered default on January 5, 2024. Plaintiffs' counsel has certified that they and their firms did not receive any responsive pleadings from Defendant.

## II. LEGAL STANDARD

If a defendant fails to plead or otherwise defend a lawsuit within the time required by Federal Rule of Civil Procedure 12(a)(1)(A), upon motion, the clerk must enter default against the defendant pursuant to Rule 55(a) of the Federal Rules of Civil Procedure. A default constitutes admission of all well-pleaded factual allegations contained in the complaint but is not considered an admission of facts that are not well-pleaded or conclusions of law. Cotton v. Mass. Mut. Life Ins. Co., 402 F.3d 1267, 1278 (11th Cir. 2005). "A motion for the Court's entry of judgment by default is not granted as a matter of right, and in fact is judicially disfavored. That is why [Rule] 55(b)(2) vests the Court with judicial discretion in determining whether the judgment should be entered." Patray v. Nw. Publ'g, Inc., 931 F. Supp. 865, 868 (S.D. Ga. 1996) (internal footnote and citation omitted). The Eleventh Circuit has instructed that "[e]ntry of judgment by default is a drastic

remedy which should be used only in extreme situations” and that courts “must respect the usual preference that cases be heard on the merits rather than resorting to sanctions that deprive a litigant of his day in court.” Mitchell v. Brown & Williamson Tobacco Corp., 294 F.3d 1309, 1316-17 (11th Cir. 2002) (quoting Wahl v. McIver, 773 F.2d 1169, 1174 (11th Cir. 1985)).

A default judgment may be entered by the court only if the well-pleaded factual allegations of the complaint, which are deemed admitted by reason of default, provide a sufficient legal basis for such entry. Nishimatsu Constr. Co. v. Hous. Nat’l Bank, 515 F.2d 1200, 1206 (5th Cir. 1975) (internal footnote omitted) (“The defendant is not held to admit facts that are not well-pleaded or to admit conclusions of law. In short, despite occasional statements to the contrary, a default is not treated as an absolute confession by the defendant of his liability and of the plaintiff’s right to recover.”).<sup>1</sup> “The court must therefore examine the sufficiency of plaintiff’s allegations to determine whether plaintiff is entitled to an entry of judgment by default.” Fidelity & Deposit Co. of Md. v. Williams, 699 F. Supp. 897, 899 (N.D. Ga. 1988).

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<sup>1</sup> Under Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), the Eleventh Circuit adopted as binding precedent all decisions of the former Fifth Circuit handed down before October 1, 1981.

The Supreme Court has explained that the pleading standard of Rule 8 of the Federal Rules of Civil Procedure

does not require detailed factual allegations, but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation. A pleading that offers labels and conclusions or a formulaic recitation of the elements of a cause of action will not do. Nor does a complaint suffice if it tenders naked assertions devoid of further factual enhancement.

Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citations and quotations omitted).

“This analysis is equally applicable to a motion for default judgment.” Edenfield v. Crib 4 Life, Inc., No. 6:13-CV-319-Orl-36KRS, 2014 WL 1345389, at \*2 (M.D. Fla. Apr. 4, 2014) (citing De Lotta v. Dezenzo’s Italian Rest., Inc., No. 6:08-CV-2033-Orl-22KRS, 2009 WL 4349806 (M.D. Fla. Nov. 24, 2009)); see also Functional Products Trading, S.A. v. JITC, LLC, No. 1:12-CV-0355-WSD, 2014 WL 3749213, at \*17 (N.D. Ga. July 29, 2014) (adopting R&R) (listing recent unreported decisions within this circuit finding Iqbal relevant to the default judgment inquiry).

### **III. ADMISSIONS OF FACT**

By defaulting, Defendant is deemed to have admitted the truth of the following allegations:

Grady Memorial Hospital Corporation (“Grady”) received and complied with wiring instructions falsely purporting to be from an employee of the Law

Offices of Ronald I. Kaplan, MD, LLC (the “Kaplan Firm”) in connection with a settlement between Grady and the Kaplan Firm’s client, Sharon Hawkins, and in reliance on these wiring instructions, sent the sum of \$100,000.00 to a JP Morgan Chase bank account (the “Wire” or “Wire Transfer”) owned by and in the name of Defendant, account number xxxxx7975 (the “Chase Account”). Compl. for Damages and Injunctive Relief (“Compl.”) [Doc. 1] ¶¶ 5, 10-12.

Defendant intentionally made false representations to Grady regarding this transaction, intending for Grady to rely upon them, inducing actual, foreseeable reliance, and causing damages to Plaintiffs in the amount of \$100,000.00. Id. ¶¶ 11-16, 31-36. Defendant and its co-conspirators used spoofed emails and redirected Plaintiffs’ funds to the Chase Account to accomplish the ends of a scheme to divert Plaintiffs’ funds and avoid detection. Compl. ¶¶ 23-24. Defendant has caused damage to Plaintiffs by misdirecting funds of Plaintiffs to the Chase Account held in its name. Compl. ¶¶ 25, 29, 41.

Plaintiffs incurred damages on account of the fraudulent acts of Defendant in the amount of \$100,000.00, which amount is liquidated and not subject to any offsets or defenses. Compl. ¶¶ 12, 21, 25.

As to the injunctive relief requested herein, Plaintiffs have obtained bank records showing that the Chase Account in the name of Defendant received and

still contains the proceeds of the Wire intended for the Kaplan Firm. JPMorgan Chase Records [Docs. 2-3, 2-4].

#### **IV. DISCUSSION**

The Court finds that Defendant has not responded to the Complaint within the time allowed by Rule 12 of the Federal Rules of Civil Procedure. The Clerk appropriately made an entry of default as provided by Rule 55(a) of the Federal Rules of Civil Procedure. A default judgment may be entered by the Court only if the well-pleaded factual allegations of the Complaint, which are deemed admitted by reason of the default, provide a sufficient legal basis for such entry.

Nishimatsu, 515 F.2d at 1206.

Plaintiffs assert four claims in the Complaint for which liquidated damages are appropriate and supported by the facts: (i) money had and received, (ii) fraud, (iii) conspiracy, and (iv) injunctive relief. The Court does not find it necessary to enter default judgment on all the claims in the Complaint. Instead, the Court will only grant default judgment as to the claim for injunctive relief.

“[I]n a default judgment setting, injunctive relief is available.” Kennedy v. Shrinathji-Krupa, Inc., No. 4:20-CV-00069-LMM, 2021 WL 2588000, at \*3 (N.D. Ga. Jan. 20, 2021) (citation omitted). Permanent injunctive relief is appropriate where a plaintiff demonstrates: (1) it has suffered irreparable injury; (2) there is no

adequate remedy at law; (3) the balance of hardship favors an equitable remedy; and (4) an issuance of an injunction is in the public interest. Angel Flight of Ga., Inc. v. Angel Flight of Am., Inc., 522 F.3d 1200, 1208 (11th Cir. 2008). Plaintiffs carried their burden on each of these four factors.

Because Defendant appears to be a shell-entity, Plaintiff has no adequate remedy other than the disgorgement of funds from the bank account at issue. Following the fraudulent deposit of Plaintiffs' funds, a sum certain amount of \$100,000 exists in the Chase Account. Allowing Defendant to profit by retaining these fraudulently obtained proceeds would be contrary to equity and would allow it to further profit using funds stolen from Plaintiffs.

The entry of a permanent injunction here would compensate Plaintiffs for the theft of their funds and serve to prevent the diverted funds from being further hidden or disposed of. Significant harm would result to Plaintiffs if Defendant further dissipates or absconds with the diverted funds, particularly outside of the jurisdiction of the United States. Defendant suffers no harm from the repatriation of these funds because Defendant has no legitimate claim to the funds.

Plaintiff is only seeking the return of the monies it has a right to and not any other funds held within the account, so the injunction is narrowly tailored. And an order for the turnover of stolen property is an appropriate use of the Court's

injunctive powers. Tiffany (NJ), LLC v. 925jewelrymax.com, 2013 WL 12094190, at \*7 (S.D. Fla. Mar. 28, 2013) (issuing permanent injunction transferring assets frozen by PayPal to plaintiff in partial satisfaction of judgment). The public interest factors also weigh in favor of the injunction as the Court is remediating fraud. Katz Durell, LLC v. Alfred, No. 1:23-CV-04167-WMR, 2023 WL 8351610, at \*3 (N.D. Ga. Oct. 24, 2023) (“[P]ublic policy disfavors allowing perpetrators of fraud to obtain or retain funds under false pretenses.”).

Defendant’s actions demonstrate the propriety of permanent injunctive relief ordering turnover of Plaintiffs’ funds held in Defendant’s account at JPMorgan Chase Bank and restraining Defendant from further moving and dissipating assets stolen from Plaintiffs.

## V. CONCLUSION

It is hereby **ORDERED** that the Motion for Default Judgment [Doc. 14] is **GRANTED**.

It is further **ORDERED** that Plaintiffs’ request for a permanent injunction is **GRANTED** and enters the following terms:

Pursuant to 18 U.S.C.A. § 1964, FED. R. CIV. P. 65, and applicable Georgia law, Defendant Smith Design Studios, LLC, all of its subsidiaries, parent companies, affiliates, successors and assigns, agents, servants, employees,



attorneys in fact, and all persons in active concert or participation with them, and each of them, directly or indirectly, who receive actual notice of this Judgment, by personal service or otherwise (collectively, the “Enjoined Parties”), be and they **ARE HEREBY PERMANENTLY RESTRAINED AND ENJOINED** as

follows:

1. JPMorgan Chase shall remit to Plaintiffs via certified funds payable to Law Offices of Ronald I. Kaplan, MD, LLC, the sum of \$100,000 plus any accrued interest since December 19, 2022, from bank account number \*\*\*\*\*7975 (the “Enjoined Account”) within fifteen (15) days of its receipt of this Order, by either hand delivering the funds or sending the funds via overnight mail, return receipt required, to Mark Lefkow, Copeland, Stair, Valz & Lovell, LLP, 191 Peachtree Street, NE, Ste. 3600, Atlanta, GA 30303.
2. Defendant Smith Design Studios, LLC, all persons and entities holding or using the Enjoined Account, and all persons and entities acting in concert and in active participation with the foregoing that receive actual notice of this Order by service of process or otherwise, **ARE HEREBY ENJOINED** from distributing, withdrawing, transferring, disposing of, converting, secreting any money,

negotiating funds, allowing distributions, allowing withdrawals, allowing transfers, and allowing negotiation of funds in or from the Enjoined Account until such time as JPMorgan Chase has delivered the sum of \$100,000 in certified funds.

3. The Court previously ordered Plaintiffs to post a bond of \$1,000 into the Court registry, and Plaintiffs complied. The clerk is authorized and directed to draw a check(s) on the funds on deposit in the registry of this Court in the principal amount of \$1,000 plus all accrued interest, minus any statutory users fees, payable to Copeland, Stair, Valz & Lovell, LLP.
4. This Order is a Final Order and all other claims besides those decided herein are **HEREBY DISMISSED**.

The Clerk is **DIRECTED** to **CLOSE** the case.

**IT IS SO ORDERED** this 26<sup>th</sup> day of February, 2024.



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MARK H. COHEN  
United States District Judge