

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CROWN DISTRIBUTING LLC,	§	
	§	
	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. 3:21-CV-1052-B
	§	
ICE SUPPZ, LLC, NALPDOG LLC, and	§	
JOSH BECKER,	§	
	§	
Defendants.	§	

MEMORANDUM OPINION AND ORDER

Before the Court is Plaintiff Crown Distributing LLC (“Plaintiff” or “Crown”)’s Motion for Entry of Default Judgment (Doc. 26). For the reasons discussed below, the Court **GRANTS IN PART** and **DENIES IN PART** the motion.

I.

BACKGROUND¹

This case arises from a contract for the purchase of hemp biomass. “Crown is a Dallas-based manufacturer and distributor of hemp-derivative goods.” Doc. 1, Compl., ¶ 32. Defendant Josh Becker (“Becker”) “brokers transactions for sourcing and purchasing of raw hemp plant material.” *Id.* ¶ 33. Defendant Ice Suppz, LLC (“Ice Suppz”) “is a brokerage firm/supplier that offers and provides services for sourcing raw hemp plant material.” *Id.* ¶ 34. Defendant Nalpdog, LLC, (“Nalpdog”) “is an entity that offers and provides services for sourcing and providing raw hemp plant

¹ This factual statement is derived from Plaintiff’s Complaint (Doc. 1) unless otherwise noted.

material.” *Id.* ¶ 35. Becker is the sole member of Ice Suppz and Ice Suppz is the sole member of Nalpdog. *Id.* ¶¶ 17, 19, 36.

In 2020, Crown hired Becker to broker a purchase of “38,000 pounds of hemp biomass with a [cannabidiol (‘CBD’)] content of 8.5% and 12,000 pounds of hemp biomass with a CBD content of 4.5%.” *Id.* ¶¶ 36, 40. Becker told Crown that Ice Suppz could supply the material and invoiced Crown through Nalpdog, indicating payment should be made directly to Ice Suppz. *Id.* ¶¶ 39–40, 42. Crown was unaware at the time of the relationship between Becker, Ice Suppz, and Nalpdog (collectively, “Defendants”). *Id.* ¶ 36. In May 2020, Crown wired “\$200,000.00 . . . directly to Ice Suppz.” *Id.* ¶ 43. About a week later, Ice Suppz delivered some of the material, but upon inspection, “[the goods received] did not meet the [contract’s] quality parameters.” *Id.* ¶ 44. “Crown immediately rejected acceptance, requested that Ice Suppz pick up the nonconforming goods, and notified Ice Suppz that the material was unacceptable and that it had rejected the goods.” *Id.* ¶ 45. “In response to Crown’s rejection of the biomass[] material, . . . Becker admitted via text message, ‘[i]t’s wrong. My people f****ed [sic] up.’” but “assured Crown [he and Ice Suppz] would rectify the issue.” *Id.* ¶¶ 46–47 (second alteration in original).

“Relying on representations . . . that acceptable substitute material would be provided,” Crown waited for Ice Suppz to cure but eventually began demanding “the return of its \$200,000.00 and pickup of the . . . nonconforming goods.” *Id.* ¶¶ 48–49. About six months later, Becker and Ice Suppz delivered approximately 15,000 pounds of again nonconforming hemp material to Crown, which Crown “again immediately rejected . . . , informed . . . Becker and Ice Suppz of the rejection . . . and requested [that] Ice Suppz . . . pick up the approximate [sic] 40,000 total pounds of nonconforming goods from [Crown’s] facility.” *Id.* ¶ 51. “Crown was never provided with acceptable

substitute material” and “its \$200,000.00 was never returned.” *Id.* ¶ 54.

On May 10, 2021, Crown filed its complaint against Defendants. Doc. 1, Compl. The complaint was served on Ice Suppz and Nalpdog on May 13, 2021. Doc. 5, Ice Suppz Return of Summons, 2; Doc. 6, Nalpdog Return of Summons, 2. The Clerk made entry of default against Ice Suppz and Nalpdog on August 3, 2021. Doc. 13, Entry of Default. After multiple attempts, Becker was finally served on September 29, 2021. Doc. 23, Return of Service, 1. Default was entered against Becker on October 26, 2021. Doc. 25, Entry of Default. On November 19, 2021, Crown moved for default judgment against all Defendants. Doc. 26, Mot. for Default J. Defendants failed to respond to Crown’s motion and the time to do so has passed. Accordingly, the motion is ripe for determination and the Court considers it below.

II.

LEGAL STANDARD

Federal Rule of Civil Procedure 55 provides for the entry of default judgments in federal court. According to Rule 55, “[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, . . . the clerk must enter the party’s default.” Fed. R. Civ. P. 55(a). Once default has been entered, the court may enter a default judgment against the defaulting defendant upon motion of the plaintiff. Fed. R. Civ. P. 55(b).

“Default judgments are a drastic remedy, not favored by the Federal Rules and resorted to by courts only in extreme situations.” *Sun Bank of Ocala v. Pelican Homestead & Sav. Ass’n*, 874 F.2d 274, 276 (5th Cir. 1989) (footnote omitted). “A party is not entitled to a default judgment” merely because “the defendant is technically in default.” *Ganther v. Ingle*, 75 F.3d 207, 212 (5th Cir. 1996). “Rather, a default judgment is generally committed to the discretion of the district court.” *United*

States v. 1998 Freightliner Vin #: 1FUyczyB3WP886986, 548 F. Supp. 2d 381, 384 (W.D. Tex. 2008) (citing *Mason v. Lister*, 562 F.2d 343, 345 (5th Cir. 1977)).

In determining whether a default judgment should be entered against a defendant, courts have developed a three-part analysis. See, e.g., *id.* First, courts consider whether the entry of default judgment is procedurally warranted. See *Lindsey v. Prive Corp.*, 161 F.3d 886, 893 (5th Cir. 1998).

The factors relevant to this inquiry include:

[1] whether material issues of fact are at issue; [2] whether there has been substantial prejudice; [3] whether the grounds for default are clearly established; [4] whether the default was caused by a good faith mistake or excusable neglect; [5] the harshness of a default judgment; and [6] whether the court would think itself obliged to set aside the default on the defendant's motion.

Id.

Second, courts assess the substantive merits of the plaintiff's claims and determine whether there is a sufficient basis in the pleadings for the judgment. See *Nishimatsu Constr. Co., Ltd. v. Hous. Nat'l Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975) (noting that "default is not treated as an absolute confession by the defendant of his liability and of the plaintiff's right to recover"). In doing so, the Court is to assume that the defendant admits all well-pleaded facts in the plaintiff's complaint. *Id.* However, "[t]he defendant is not held to admit facts that are not-well pleaded or to admit conclusions of law." *Id.*

Third, courts determine what form of relief, if any, the plaintiff should receive. *Ins. Co. of the W. v. H & G Contractors, Inc.*, 2011 WL 4738197, at *4 (S.D. Tex. Oct. 5, 2011) ("A defendant's default concedes the truth of the allegations of the Complaint concerning the defendant's liability, but not damages.") (citing *Jackson v. FIE Corp.*, 302 F.3d 515, 524–25 (5th Cir. 2002)). Normally, damages are not to be awarded without a hearing or a demonstration by detailed affidavits

establishing the necessary facts. See *United Artists Corp. v. Freeman*, 605 F.2d 854, 857 (5th Cir. 1979). However, if the amount of damages can be determined with mathematical calculation by reference to the pleadings and supporting documents, a hearing is unnecessary. *James v. Frame*, 6 F.3d 307, 310 (5th Cir. 1993).

III.

ANALYSIS

First, the Court finds that entry of a default judgment is procedurally warranted. Next, considering the substance of the claims, the Court finds a sufficient basis in the pleadings for entry of default judgment on Crown's breach-of-contract claim against Becker and Ice Suppz. However, the Court finds that: the fraud, negligent misrepresentation, and negligence claims against Defendants are likely barred by Texas's economic loss rule; Crown may not receive judgment for both unjust enrichment and breach of contract from Becker and Ice Suppz; and Crown has not stated a claim for unjust enrichment against Nalpdog. The Court therefore denies entry of default judgment on all but the breach-of-contract claim. Finally, because Crown has prevailed on only its breach-of-contract claim against Becker and Ice Suppz, and has not segregated its fees, the Court declines to award attorneys' fees at this time and instructs Crown to file a supplemental motion for attorneys' fees, costs, and prejudgment interest in light of this Order. But, the Court enters an award of actual damages for breach of contract and postjudgment interest against Becker and Ice Suppz.

A. *Whether an Entry of Default Judgment is Procedurally Warranted*

The court finds that default judgment is procedurally warranted after considering the *Lindsey* factors. See *Lindsey*, 161 F.3d at 893. First, there are no disputed material facts because Defendants did not file any responsive pleadings. See *Nishimatsu Constr. Co.*, 515 F.2d at 1206. Second,

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