

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

SHIRLEY RIVERA.
Plaintiff,

v.

WEST HAVEN SMILE DENTAL, LLC
Defendant.

No. 3:16-cv-252 (VAB)

ORDER TO ENTER DEFAULT

On September 11, 2018, the Clerk of the Court issued a Rule 41(a) Notice in this action, warning the parties that the case would be dismissed for lack of activity for more than six months absent a timely explanation. 41(a) Notice, dated Sept. 11, 2018, ECF No. 37. On September 30, 2018, Shirley Rivera (“Plaintiff”) responded to the Notice, explaining that she intended to move for a default judgment. Response to 41(a) Notice, dated Sept. 30, 2018 (“Pl.’s Response”), ECF No. 38.

On October 3, 2018, Ms. Rivera moved for default judgment against West Haven Smile Dental, LLC (“Defendant”) or, in the alternative, for a motion to compel compliance with the initial discovery protocols. Motion for Default Judgment, dated Oct. 3, 2018 (“Pl.’s Mot.”), ECF No. 39; Memorandum of Law in Support of Pl.’s Mot., dated Oct. 3, 2018 (“Pl.’s Mem.”), annexed to Pl.’s Mot., at 3–6.

On October 30, 2018, the Court found that while it appeared the default of Defendant should be entered, it was not clear from the docket that Defendant was ever served with the Court’s Order granting its counsel’s motion to withdraw, or with any subsequent Order of this Court; nor was it clear whether Ms. Rivera’s response to the Rule 41(a) Notice or motion for default judgment was served on Defendant. Order to Show Cause, dated Oct. 30, 2018, ECF No.

40, at 2. To correct the defects in notice and ensure the efficient resolution of this case, the Court ordered Ms. Rivera to serve copies of all Orders and documents filed since the motion to withdraw was filed, including the October 30, 2018 Order to Show Cause, and to file proof of such service by November 16, 2018. *Id.* at 3. The Court further ordered that West Haven Smile Dental, LLC's default would be entered for failure to defend unless by December 14, 2018, new counsel for West Haven Smile Dental, LLC appeared to defend and show cause why Defendant's default should not be entered for failure to defend. *Id.*

On November 15, 2018, Plaintiff filed proof that it had served Daniel D. Kim, DDS at 2 Castle Walk, Scarsdale, New York, with the documents required by the Order to Show Cause, by delivering a copy of the documents to a person of suitable age and discretion at that address, Joshua Kim, and by mailing a copy to Dr. Kim. *See* Affidavit of Service, annexed to Plaintiff's Response to Order to Show Cause, dated Nov. 12, 2018, ECF No. 41-1. A cover letter accompanying the documents alleges that Dr. Kim is the "sole member" of West Haven Smile Dental, LLC, a limited liability corporation. *See* Plaintiff's Response to Order to Show Cause filed Nov. 15, 2018, ECF No. 41, at 1.

Dr. Kim is alleged to be "Defendant Owner" in the Complaint. *See* Compl. ¶10. In its Answer, Defendant admitted that it was a "limited liability company created and existing under the laws of the State of Connecticut" but did not admit any facts as to its ownership. *See* Answer, dated Apr. 18, 2016, ECF No. 9, ¶ 2 (admitting Compl. ¶ 2) & ¶ 10 (stating insufficient knowledge of facts in Compl. ¶ 10). No other evidence in the record directly indicates Dr. Kim's relationship to Defendant.

However, a search of the Connecticut Secretary of State's business records reveals that Defendant is registered under Business ID number 1059460 with a business address of 666

Campbell Avenue, West Haven, CT 06516 (the same address alleged in the Complaint and admitted by Defendant, Compl. ¶ 2). *See* Conn. Sec’y of State, Commercial Recording Division, *West Haven Smile Dental LLC*, <https://www.concord-sots.ct.gov/CONCORD/online?sn=PublicInquiry&eid=9740>. That record lists “Daniel D Kim DDS LLC” as a principal with the title “Member,” with a residence address of 2 Castle Walk, Scarsdale, New York.¹ *Id.* In addition, in a separate civil action filed in state court, Dr. Kim was listed as Defendant’s sole witness apart from the plaintiff in that case. *See* Trial Management Report of Defendant, *Perez v. West Haven Smile Dental, LLC*, No. NNHCV156057363S, Entry No. 119.00 (Super. Ct. New Haven Sept. 29, 2017).

The Court therefore concludes that Plaintiff properly complied with the Order to Show Cause.

More than one month has passed since the December 14, 2018 deadline in the Order to Show Cause. New counsel for West Haven Smile Dental, LLC has to date not appeared to defend and show cause why Defendant’s default should not be entered for failure to defend.

Accordingly, the Court finds that Defendant has failed to defend and that its default should be entered under Federal Rule of Civil Procedure 55(a). **The Clerk of the Court is respectfully directed to enter the default of West Haven Smile Dental, LLC.**

“While a party's default is deemed to constitute a concession of all well pleaded allegations of liability, it is not considered an admission of damages. Damages, which are neither susceptible of mathematical computation nor liquidated as of the default, usually must be established by the plaintiff in an evidentiary proceeding in which the defendant has the

¹ It appears that “Daniel D Kim DDS LLC” refers to another limited liability corporation, but also the individual Dr. Kim.

opportunity to contest the amount.” *Greyhound Exhibitgroup, Inc. v. E.L.U.L. Realty Corp.*, 973 F.2d 155, 158 (2d Cir. 1992).

Plaintiff therefore is directed to move for default judgment under Federal Rule of Civil Procedure 55(b) by **February 8, 2019**. The Court will hold an inquest hearing on the motion on **March 7, 2019 at 12:00 p.m.**

SO ORDERED at Bridgeport, Connecticut, this 22nd day of January, 2019.

/s/ Victor A. Bolden
Victor A. Bolden
United States District Judge