

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

|                                  |   |                              |
|----------------------------------|---|------------------------------|
| HER IMPORTS                      | ) |                              |
|                                  | ) |                              |
| Plaintiff,                       | ) |                              |
| vs.                              | ) | Case No. 1:22-cv-03243       |
|                                  | ) |                              |
| CABELLO REAL, LTD                | ) | Honorable Nancy L. Maldonado |
| incorporated in the United Arab  | ) |                              |
| Emirates, CABELLO REAL FZE,      | ) |                              |
| incorporated in the United Arab  | ) |                              |
| Emirates, JOHN DOES 1-10 and Roe | ) |                              |
| Corporations 1-10.               | ) |                              |
|                                  | ) |                              |
| Defendants.                      | ) |                              |

**PLAINTIFF’S MEMORANDUM IN SUPPORT OF ITS MOTION  
FOR ENTRY OF DEFAULT AND DEFAULT JUDGMENT  
AGAINST THE DEFENDANTS**

Plaintiff **HER IMPORTS** (“Plaintiff” or “Her Imports”) submit the following memorandum in support of its Motion for Entry of Default and Default Judgment under Fed. R. Civ. P. 55 against the Defendants, CABELLO REAL, LTD., and CABELLO REAL TZE. (collectively, the “Defaulting Defendants”) based on Her Import’s civil action for reimbursement of \$753,772.

**I. STATEMENT OF FACTS**

The Plaintiff, Her Imports, a Nevada corporation, operates a business that globally sources, markets and sells human hair as hair extensions and related haircare and beauty products. Its predecessor, Her Imports, LLC, a private limited liability company was originally formed and operated by Patrick Johnathan William Terry (hereinafter “Mr. Terry”). The Defaulting Defendants own approximately 64% of the common stock of Her Imports and are controlled by Mr. Terry. Although the Defaulting Defendants own approximately 64% of the common stock of

Her Imports, the Defaulting Defendants only hold approximately 31% of the voting rights in Her Imports.

At the beginning of Her Imports, Mr. Terry made positive contributions to help Her Imports succeed. These positive contributions started to break down, when Mr. Terry wanted to open a South American subsidiary.

Mr. Terry started asking the Plaintiff to pay bills, and pay special bonuses under the pretense that he was helping build the business for Her Imports. The requests continued to increase, and based on the past working relationship, Her Imports accommodated these requests.

Her Imports became suspicious of Mr. Terry's activities, when management learned that some inventory was missing. 26. Under and information and belief, Her Imports management believed Mr. Terry was self-dealing at the expense of Her Imports. The management of Her Imports confronted Mr. Terry and asked him to pay back the misdirected funds, to no avail. While these misdirected transactions took place, Mr. Terry took control of Her Imports website, URL ([www.herimports.com](http://www.herimports.com)), Facebook account and the Instagram account.

Over approximately a two-year period, \$753,772 was advanced to pay personal expenses of the Defaulting Defendants. The records will demonstrate that Mr. Terry directed Her Imports to pay rents, mortgage payments, travel, and other personal payments, paid directly to the Defendants' third party designees.

When Her Imports learned that these were non-business expenses, Her Imports stopped further payments and directed the reimbursement of these funds from the Defendants to no avail.

Her Imports filed this action with the intention that it would be decided upon its merits and is confident Her Imports would prevail at trial. Since the Defaulting Defendants do not appear

deposed to defend this action, it is this Court that has the only avenue available to conclude this matter for the entry of default judgment against the Defaulting Defendants.

## **II. ARGUMENT**

### **A. JURISDICTION AND VENUE ARE PROPER IN THIS COURT**

This Court has jurisdiction over this action pursuant to 28 U.S.C. §1332 because the amount in controversy exceeds \$75,000, exclusive of interest and costs, and because Plaintiff is a citizen of a state different from any of the Defendants.

Venue is proper in this Court pursuant to 28 U.S.C. § 1391 in that Defendant, Her Imports for the past three years, has conducted business and maintained offices and a retail store located at 564 W. Randolph Street, 2nd Floor, Chicago, Cook County Illinois and is subject to personal jurisdiction in this District.

### **B. PLAINTIFF HAS MET THE REQUIREMENTS FOR ENTRY OF DEFAULT**

Pursuant to Rule 55(a) of the Federal Rules of Civil Procedure, “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 affidavit or otherwise, the clerk must enter the party's default.” Fed. R. Civ. P. 55(a).

On June 21, 2022, Plaintiff filed its Complaint alleging Counts I (Unjust Enrichment), Count II (Breach of Fiduciary Duty), in the alternative Count III (Conversion) and Count IV (Costs and Expenses) [Dkt. 1]. See attached Exhibit A.

The Defaulting Defendants were properly served with the Complaint on September 9, 2022. [Dkt. 1]. Despite having been served with process, none of the Defaulting Defendants have filed an answer or otherwise pled in this action. Jesky Declaration at ¶ 2. On information and belief, the Defaulting Defendants are not active-duty members of the U.S. armed forces. *Id.* at ¶ 4.

Accordingly, Plaintiff asks for entry of default against the Defaulting Defendants. See attached Exhibit C (Declaration).

**C. THE DEFAULTING DEFENDANTS HAVE FAILED TO ANSWER THE COMPLAINT OR OTHERWISE DEFEND THIS ACTION AND THE PLAINTIFF IS ENTITLED TO A JUDGMENT BY DEFAULT**

Rule 12(a)(1)(A) of the Federal Rules of civil Procedure provides that a defendant shall serve its answer to a complaint within twenty days of service of the latter. The Complaint was filed on June 21, 2022, and served electronically on the Defaulting Defendants and their control person, on September 9, 2022. The Summons issued by the Court on July 18, 2022 and served upon the Defaulting Defendants and their control person together with the Complaint, notified the Defaulting Defendants of their obligation to file an answer with the Clerk of the Court and to serve a copy of the Answer upon the Plaintiff, withing twenty days from the date of service. More than twenty days have passed and the Defaulting Defendants had not served an answer upon the Plaintiff, has made no entry of appearance in this matter, and had not otherwise responded to this civil action instituted against them by Her Imports. To this date, the Defaulting Defendants have undertaken no defense in this matter.

The Plaintiff recognizes that entry of a default judgment against the Defaulting Defendants is a severe remedy. See *E.F. Hutton & Co., Inc. v Moffatt*, 460 F.2d 284, 285 (5th Cir. 1972). Where as here, however, a party does not respond to a properly served Complaint and ignore a duly issued and properly served Summons of a Court a default judgment, though drastic, is the appropriate and indeed, the only recourse. See, *In re Knight*, 833 F.2d 1515, 1516 (11th Cir. 1987) (where a party offers no good reason for late filing of an answer, entry of default judgment is appropriate).

**D. PLAINTIFF HAS MET THE REQUIREMENTS FOR ENTRY OF DEFAULT JUDGMENT**

Rule 55(b)(2) of the Federal Rules of Civil Procedure provides for a court-ordered default judgment. A default judgment establishes, as a matter of law, that defendants are liable to plaintiff on each cause of action alleged in the complaint. *United States v. Di Mucci*, 879 F.2d 1488, 1497 (7th Cir. 1989). When the Court determines that a defendant is in default, the factual allegations of the complaint are taken as true and may not be challenged, and the defendants are liable as a matter of law as to each cause of action alleged in the complaint or equitable relief. *Fed. Trade Commission v. Kitco of Nevada, Inc.*, 612 F. Supp. 1282 (D.C. Minn. 1985). *Black v. Lane*, 22 F.3d 1395, 1399 (7th Cir. 1994).

As noted above, Plaintiff electronically served Defendants on September 9, 2022. [Dkt. 10]. The answer deadline has passed and no answer or other responsive pleading has been filed by any of the Defaulting Defendants. *See* Fed. R. Civ. P. 12(a)(1)(A). Accordingly, default judgment is appropriate, and pursuant to 35 U.S.C. § 289, Plaintiff requests an award to reimburse the monies taken by Defaulting Defendants' and not reimbursed.

Since the Defaulting Defendants have failed to answer or otherwise plead in this matter, the Court must accept the allegations contained in Plaintiff's Complaint as true. *See* Fed. R. Civ. P. 8(b)(6); *Am. Taxi Dispatch, Inc., v. Am. Metro Taxi & Limo Co.*, 582 F. Supp. 2d 999, 1004 (N.D. Ill. 2008). Accordingly, Plaintiff requests entry of judgment.

**E. EXPLANATION OF THE DEFAULT FINAL JUDGMENT**

The Plaintiff believes that the Default Final Judgment provides an adequate remedy for the alleged unjust enrichment and breach of fiduciary duty undertaken by the Defaulting Defendants not to return the \$753,772 taken by them at the expense of the Plaintiff.

The Default Final Judgment is intended to insure that the Defaulting Defendants reimburse the Plaintiff for the monies owed.

### III. CONCLUSION

Plaintiff respectfully requests that the Court enter default and default judgment against each of Defaulting Defendants, jointly severally liable for the unlawful actions as alleged in the complaint.

October 18, 2022

Respectfully submitted,

/s/ T. J. Jesky

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 18th day of October 2022, I shall electronically file the foregoing with the Clerk of the Court using the CM/ECF system, I shall electronically publish the documents on the [www.312legal.com](http://www.312legal.com) website and I shall send an e-mail to the e-mail addresses identified in the Declaration of T. J. Jesky (Exhibit C) as well as their Facebook and WhatsApp accounts that includes a link to said website.

//s/ T. J. Jesky  
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