

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ACARTHA GROUP, LLC, by and through its)	
RECEIVER, CLAIRE M. SCHENK,)	
)	
Plaintiff,)	
)	
v.)	Case No. 4:12-cv-1142
)	
MORRISS HOLDINGS, LLC,)	
)	
Defendant.)	

ACARTHA GROUP, LLC’S MOTION FOR ENTRY OF DEFAULT AGAINST DEFENDANT MORRISS HOLDINGS, LLC.

COMES NOW Plaintiff Acartha Group, LLC, by and through its Receiver, Claire M. Schenk (“Acartha Group”), pursuant to Fed. R. Civ. P. 55(a), and for its Motion for Entry of Default Against Defendant Morriss Holdings, LLC (“Morriss Holdings”), states as follows:

1. Under Federal Rule 55(a), the Clerk “must” enter an order of default against a party that fails to defend itself. Fed. R. Civ. P. 55(a).

2. Here, because Morriss Holdings is not represented by counsel, it cannot defend itself against the claims asserted by Acartha Group. *Ackra Direct Mktg. Corp. v. Fingerhut Corp.*, 86 F.3d 852, 857 (8th Cir. 1996). Recognizing this principle, the Court ordered Morriss Holdings to obtain replacement counsel after its original attorneys withdrew several months ago. ECF No. 10, p. 1. Morriss Holdings failed to obtain replacement counsel. Moreover, because Morriss Holdings has no assets or employees, *S.E.C. v. Burton Douglas Morriss, et al.*, Case No. 4:12-cv-00080-CEJ (ECF No. 195 & 202), it is not likely to obtain replacement counsel in the future.

3. For these reasons, and for the reasons set forth in the accompanying Memorandum in Support, the Clerk should enter a default against Morriss Holdings pursuant to Federal Rule 55(a).

WHEREFORE, Plaintiff Acartha Group, LLC, by and through its Receiver, Claire M. Schenk, respectfully requests the Clerk enter a default against Defendant Morriss Holdings, and for any additional relief the Court deems just and proper.

Respectfully submitted,

THOMPSON COBURN LLP

By /s/ Stephen B. Higgins

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CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing document on December 17, 2012, with the Clerk of the Court using the CM/ECF system.

/s/ Stephen B. Higgins

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ACARTHA GROUP, LLC, by and through its)	
RECEIVER, CLAIRE M. SCHENK,)	
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v.)	Case No. 4:12-cv-1142
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MORRISS HOLDINGS, LLC,)	
)	
Defendant.)	

**ACARTHA GROUP, LLC’S MOTION FOR ENTRY OF DEFAULT AGAINST
DEFENDANT MORRISS HOLDINGS, LLC. AND MEMORANDUM IN SUPPORT**

COMES NOW Plaintiff Acartha Group, LLC, by and through its Receiver, Claire M. Schenk (“Acartha Group”), pursuant to Fed. R. Civ. P. 55(a), and for its Memorandum in Support of its Motion for Entry of Default Against Defendant Morriss Holdings, LLC (“Morriss Holdings”), states as follows:

INTRODUCTION

1. Acartha Group files this Motion because the defendant in this lawsuit, Morriss Holdings, violated a Court order when it failed to retain counsel by November 16, 2012. Indeed, Sher Corwin Winters LLC (“Sher Corwin”) filed a Motion to Withdraw as Morriss Holding’s counsel on September 18, 2012. ECF No. 8. In its Order granting Sher Corwin’s motion, the Court warned that “[i]n order to continue to defend itself in this action, [Morriss Holdings] will be required to obtain a new attorney who is admitted to practice in this district court” by November 16, 2012. ECF No. 10, p. 1. The Court further warned that it may impose “sanctions, including the entry of default and default judgment” against Morriss Holdings if it did not obtain new counsel. *Id.* To date, Morriss Holdings has not obtained new counsel.

ARGUMENT

**The Clerk Should Enter a Default Against Morriss Holdings
Because it Cannot Defend Against Acartha Group's Complaint Without Counsel**

2. Under Federal Rule 55(a), the Clerk “must” enter an order of default against a party that fails to defend itself. Fed. R. Civ. P. 55(a). Because a corporation cannot defend itself in civil litigation without counsel, *Ackra Direct Mktg. Corp. v. Fingerhut Corp.*, 86 F.3d 852, 857 (8th Cir. 1996), courts “repeatedly” enter defaults and default judgments against corporations that do not obtain counsel “in violation of a court order or rule to do” *Progressive Specialty Ins. Co. v. E & K Trucking, Inc.*, CIV.A. 08-00719-WS-B, 2010 WL 2465190, at *1 (S.D. Ala. Apr. 16, 2010) report and recommendation adopted, CIV.A.08-0719-WS-B, 2010 WL 2383971 (S.D. Ala. June 11, 2010); *see also Forsythe v. Hales*, 255 F.3d 487, 490 (8th Cir. 2001).

3. The Clerk should enter a default against Morriss Holdings under Rule 55(a) because it cannot defend against Acartha Group's Complaint without counsel. As stated above, counsel for Morriss Holdings withdrew almost three months ago, and Morriss Holdings violated the Court's directive in its Order granting Sher Corwin's Motion to Withdraw when it failed to obtain replacement counsel by November 16. Moreover, because Morriss Holdings has no assets or employees, *S.E.C. v. Burton Douglas Morriss, et al.*, Case No. 4:12-cv-00080-CEJ (ECF No. 195 & 202), Morriss Holdings is unlikely to retain new counsel in the future. Continuing this lawsuit and requiring Acartha Group to prepare for trial would waste the resources of the Court and the scarce resources of Acartha Group's Receiver.

CONCLUSION

4. Morriss Holdings violated the Court's Order when it failed to obtain replacement counsel by November 16. It cannot represent itself in this lawsuit without representation. Because Morriss Holdings is not represented by counsel, the Clerk should enter a default against Morriss Holdings pursuant to Federal Rule 55(a).

WHEREFORE, Plaintiff Acartha Group, LLC, by and through its Receiver, Claire M. Schenk, respectfully requests the Clerk enter a default against Defendant Morriss Holdings, and for any additional relief the Court deems just and proper.

Respectfully submitted,

THOMPSON COBURN LLP

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