

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

HONG YANG,

Plaintiff,

v.

2:23-cv-483-JLB-NPM

**CULTURALINK, INC., and
CULTURALINK, LLC,**

Defendants.

ORDER

Before the court is a motion for entry of clerk's default. Plaintiff Hong Yang requests the court direct the clerk to enter default against defendants Culturalink, Inc. and Culturalink, LLC. No responses were filed to the motion and the time to do so has expired. For the reasons discussed below, the motion is granted in part.

“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). Before directing the clerk to enter a default, however, the court must determine whether Yang properly effected service of process, for which she bears the burden of proof. Fed. R. Civ. P. 4(l); *Valentin v. Mayorkas*, No. 2:21-cv-915-JLB-MRM, 2022 WL 17461663, *1 (M.D. Fla. May 25, 2022) (citing *Chambers v. Halsted Fin. Servs., LLC*, No. 2:13-cv-809-FTM-38, 2014 WL 3721209, *1 (M.D. Fla. July 28, 2014)).

Federal Rule of Civil Procedure 4(h)(1)(B) allows the service of a corporation, partnership, or association within a judicial district of the United States by delivering a copy of the summons and complaint “to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process” Florida law also permits service on a foreign limited liability company or corporation by serving its registered agent. *See Fla. Stat. §§ 48.062, 48.081(2)*.

Here, the record shows that Yang effected service of process upon the Delaware entity—Culturalink, LLC—and the Georgia entity—Culturalink, Inc. by serving Lynanne Gares on August 15, 2023. (Docs. 5, 6). But upon closer examination, Gares is the registered agent for only Culturalink, LLC.¹ On the other hand, Richard Gordon of Norcross, Georgia is Culturalink, Inc.’s proper registered agent.² So Yang has never properly served Culturalink, Inc. Therefore, pursuant to Rule 55(a), clerk’s default may be entered only as to Culturalink, LLC.

Notably, this does not mean that Yang (or those similarly situated) are entitled to a judgment by default on the unpaid wages claim. Rather, it means that Culturalink, LLC has sacrificed its ability to file a responsive pleading and has admitted to any “well-pleaded allegations of fact” other than one relating to the


¹ *See* State of Delaware, Official Website, <https://icis.corp.delaware.gov/eCorp/EntitySearch/NameSearch.aspx> (last visited June 28, 2024).

² *See* Georgia Secretary of State, Official Website, <https://ecorp.sos.ga.gov/BusinessSearch> (last visited June 28, 2024).

amount of damages. *See* Fed. R. Civ. P. 8(b)(6); *Tyco Fire & Sec., LLC v. Alcocer*, 218 F. App'x 860, 863 (11th Cir. 2007); *see generally* 10A Charles Alan Wright, et al., Federal Practice and Procedure § 2688.1 (4th ed. 2016). And it does not imply that Culturalink, LLC has admitted to any conclusions of law, such as whether the court should approve any notice of the suit to similarly situated individuals or set any opt-in deadline. *See Cotton v. Massachusetts Mut. Life Ins. Co.*, 402 F.3d 1267, 1277-1280 (11th Cir. 2005) (reversing judgment because defaulted defendant successfully challenged the legal sufficiency of plaintiff's claim); *Tyco Fire & Sec.*, 218 F. App'x at 863-864 (“the defendant, even though in default, is still entitled to contest the sufficiency of the complaint and its allegations to support the judgment being sought”).

Accordingly, Yang's motion (Doc. 7) is **GRANTED in part**, and the clerk is directed to enter a default as to Culturalink, LLC. By July 19, 2024, Yang must file a return of executed service as to Culturalink, Inc.

ORDERED on June 28, 2024.



NICHOLAS P. MIZELL
United States Magistrate Judge