

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

FREDERICK W. SMITH, JR., :
 :
 Plaintiff, :
 :
 v. : Civ. Action No. 19-1634-RGA
 :
 CONNECTIONS CSP, INC., :
 :
 Defendant. :

MEMORANDUM ORDER

At Wilmington this 29th day of May, 2020, having considered Plaintiff's motions for default judgment (D.I. 17, 22);

IT IS ORDERED that the motions (D.I. 17, 22) are **DENIED**, for the following reasons:

1. On November 7, 2019, an order was entered for service upon Defendant Connections CSP, Inc. (D.I. 13). The order gave Defendant 90 days from entry of the service order to file a waiver of service executed and/or a waiver of service unexecuted. (*Id.*). The order gave Defendant 60 days from the time of filing the waiver to file a responsive pleading or otherwise defend. (*Id.*).

2. 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).

3. On December 17, 2019, Plaintiff prematurely filed a request for default judgment, the 90-day period for service having not yet exhausted. (D.I. 17). On February 7, 2020, Plaintiff filed a second motion for entry of default judgment, again

premature. (D.I. 22). Two days earlier, on February 5, 2020, Defendant had waived service and counsel had entered an appearance on behalf of Defendant. (D.I. 21). As set forth in the November 7, 2019 Order, Defendant had 60 days from February 5, 2020 to plead or otherwise defend. Defendant filed a motion to dismiss on April 2, 2020. (D.I. 31). When Plaintiff filed the second motion for default judgment, the 60 days had not expired. The motion to dismiss was thus timely. Accordingly, the motions will be denied.

/s/ Richard G. Andrews
UNITED STATES DISTRICT JUDGE