

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

DOCKET NO. 15CV10499-WGY

BHARANIDHARAN PADMANABHAN, MD, PHD,

Plaintiff

CENTERS FOR MEDICARE & MEDICAID, ET AL.,

Defendants

**MEMORANDUM OF REASONS & LEGAL AUTHORITY IN SUPPORT OF
PLAINTIFF'S MOTION TO ENTER DEFAULT & JUDICIAL NOTICE OF
ESTABLISHED LIABILITY**

The grounds on which this motion to enter default against Defendant The Greeley Company are set forth as follows:

1. Plaintiff Dr. Bharani filed the underlying Complaint regarding the above-referenced action with the Massachusetts trial court of Norfolk Superior Court on October 17, 2014.

2. A true copy of the docket sheet for the above-referenced filed Complaint with Norfolk Superior Court (NOCV2014-01410)—that undersigned counsel downloaded from the AOTC electronic system—is attached hereto as Exhibit 1.

3. On January 16, 2015, Plaintiff Dr. Bharani served the Complaint and summons was served by the Sheriff to Defendant The Greeley Company at its place of business in Danvers, MA. (A copy of the return of service is provided in Exhibit 2).

4. The Greeley Company did not file any notice of appearance in the Norfolk Superior Court action.

5. Defendant The Greeley Company did not file any responsive pleading—or any pleading of any kind—in the Norfolk Superior Court action.

6. On February 10, 2015, Plaintiff Dr. Bharani served Defendant The Greeley Company a subpoena to produce documents by certified mail regarding the administrative hearing of the Board of Registration in Medicine—which service was made to the same address as made with the Complaint and summons.

7. With regard to the afore-described subpoena, Defendant The Greeley Company retained counsel and filed a motion to quash the subpoena in the administrative hearing of the Board of Registration in Medicine. (Copy of correspondence sent by counsel on behalf of the Greeley Company is provided in Exhibit 3).

8. Despite counsel having responded on behalf of Defendant The Greeley Company as described above on February 19, 2015, Defendant The Greeley Company still failed to file a Notice of Appearance or any other pleading in the Norfolk Superior Court action.

9. Thereafter the above-described written response made on behalf of the Defendant The Greeley Company, on March 3, 2015, Plaintiff Dr. Bharani served Defendant The Greeley Company a subpoena to produce documents by certified mail with regard to the Norfolk Superior Court action. The subpoena was delivered March 4, 2015. (A copy of the tracking sheet from the USPS and receipt is provided in Exhibit 4)—and, still, Defendant The Greeley Company did not file any Notice of Appearance or any pleading of any kind.

10. As set forth above, *prior* to the removal of the Norfolk action to the U.S. District Court, the above-named Defendant The Greeley Company was, effectively, in default for failure to provide a responsive pleading to the Complaint pursuant to the Civil Rules of Procedure for the Massachusetts Superior Court; and, upon the removal of the Norfolk action to the

U.S. District Court, Defendant The Greeley Company is in default pursuant to Rules 55(a) and 81 of the Federal Rules of Civil Procedure.

11. As evidenced above, Defendant The Greeley Company's failure to provide a responsive pleading to the Complaint was knowing and willful given counsel having filed a motion on behalf of Defendant The Greeley Company in the afore-described administrative proceeding.

12. As demonstrated, Defendant The Greeley Company does not have legitimate or reasonable grounds for excusable failure to file a responsive pleading to the Complaint.

13. Upon the entry of default, each of the allegations of fact made by the Plaintiff in his complaint must be taken as true and each of his claims must be considered established as a matter of law. Brockton Savings Bank v. Peat, Marwick, Mitchell & Co., 771 F.2d 5, 13 (C.A.1 (Mass.) 1985).

WHEREFORE, for all the above reasons, Plaintiff requests that his motion for an entry of default be entered against Defendant The Greeley Company, and that Defendant The Greeley Company be judicially deemed that the claims against it are established as a matter of law.

Respectfully submitted,

/s/ Lisa Siegel Belanger

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