

United States of America

District of Utah

TRANSCRIPT OF JUDGMENT DOCKET OF THE UNITED STATES DISTRICT COURT, DISTRICT OF UTAH

No.	NAME OF JUDGMENT DEBTOR	NAME OF JUDGMENT CREDITOR	JUDGMENT	Date of Entry	Appeal; When Taken	Judgment of Appellate Court	Satisfaction of Judgment When Entered
2:11-mc-463 (foreign judgment)	Justin Williams	Zimmerman Consulting	<p>Default Judgment entered in favor of Plaintiff Zimmerman Consulting, Inc. Dba Sandhill Child Development Center and against Justin Williams in the amount of \$75,075.93 as of 8/12/10, plus \$9,634.05 in attorneys fees and costs, plus pre- and post-judgment interest at a rate of 13% per annum.</p> <p>Original judgment out of the U.S. District Court of New Mexico (Case No. 10CV958 JB/LFG)</p>	5/23/11			

ENTRY NO. 00929162

08/26/2011 10:51:45 AM B: 2093 P: 0552
 Judgement PAGE 1/6
 PLAN SPRIGGS, SUMMIT COUNTY RECORDER
 FEE 20.00 BY MARK K WILLIAMS



Zimmerman Consulting
 vs.
 Justin Williams

I, D. Mark Jones, Clerk of the United States District Court for the District of Utah, do hereby certify the above and foregoing to be a true and correct transcript and copy of the original entries on the Judgment Docket of said Court in the above entitled cause, as fully as the same now appear in my office.

ATTEST

WITNESS, my hand and the seal of said Court, this August 23, 2011, and of the Independence of the United States of America the 23rd day of August.

D. MARK JONES
 CLERK

By: *[Signature]*
 Julie Wriegschem
 DEPUTY CLERK

Unofficial Copy

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

ZIMMERMAN CONSULTING, INC. dba
SANDHILL CHILD DEVELOPMENT CENTER,


Plaintiff,

vs.

JUSTIN WILLIAMS,

Defendant.

No. 10CV958 JB/LFG

FILED
U.S. DISTRICT COURT
2011 MAY 23 1:01
DISTRICT OF UTAH
BY: 
CLERK

**CLERK'S CERTIFICATION OF A JUDGMENT TO BE
REGISTERED IN ANOTHER DISTRICT**

I certify that the attached judgment is a copy of a judgment entered by this court on (date)
March 31, 2011

I also certify that, as appears from this court's records, no motion listed in Fed. R. App. P. 4(a)(4)(A) is pending before this court and that no appeal has been filed or, if one was filed, that it is no longer pending.

Date: 4/21/11

CLERK OF COURT



Signature of Clerk or Deputy Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**ZIMMERMAN CONSULTING, INC. dba
SANDHILL CHILD DEVELOPMENT CENTER,**

Plaintiff,

vs.

No. CIV 10-958 JB/LFG

JUSTIN WILLIAMS,

Defendant.

ORDER OF DEFAULT JUDGMENT

THIS MATTER having come before the Court upon Plaintiff Zimmerman Consulting, Inc. d/b/a Sandhill Child Development Center's ("Plaintiff") Motion for Default Judgment (the "Motion"), and the Court finding good cause, finds the following:

1. The Complaint was filed on October 7, 2010 (Doc. 1), and the Summons was issued on October 8, 2010 (*see* Doc. 5-2).

2. In compliance with the Order Granting Motion to Extend Time for Service and to Allow Service by Publication (Doc. 6), service of the Complaint has been completed:

- A. Service by publication in the *Albuquerque Journal* was completed on February 4, 2011. (Doc. 7.)
- B. Service by publication in *The Park Record* was completed on February 5, 2011. (Doc. 9.)¹
- C. And, three additional attempts to serve Defendant Justin Williams

¹ While this Affidavit of Publication misstates the first date of publication as February 22, 2011, rather than January 22, 2011. The correct date, i.e. January 22nd, is noted in the notice affixed to the Affidavit.

("Defendant") personally were completed by February 23, 2011. (Doc. 10.)

3. Pursuant to Exhibit A to the Order, Defendant had 30 days from the final publication of the Notice to appear in this action. (Doc. 5-1.) Otherwise, the notice warned "judgment by default will be entered against you." (*Id.*)

4. Final publication of the Notice occurred on February 5, 2011. Therefore, Defendant had until March 7, 2011, to appear in this action.

5. Defendant has failed to appear, answer or otherwise plead within the time permitted.

6. Under Fed. R. Civ. Proc. 8(b)(6), "An allegation – other than one relating to the amount of damages – is admitted if a responsive pleading is required and the allegation is not denied. . ." Defendant's failure to respond to the allegations in the Complaint, other than those related to damages, renders them admitted. This Court, therefore, accepts these allegations from the Complaint as true.²

7. As to the allegations in the Complaint regarding damages, Plaintiff seeks its actual damages for Breach of Contract, plus its related attorneys' fees and costs and pre- and post-judgment interest.³ The Court has sufficient information through the Complaint, the Motion and supporting documents to render judgment on the damages without a hearing:

A. The Complaint sets forth sufficient facts upon which the Court can determine

² The Agreement and Addendum between the parties also specifically set forth the rights and remedies of Plaintiff as to Defendant for non-payment. (See Exhibits 1 and 2 to Doc. 11-1 (Affidavit of Kevin Alexy).) The Court, therefore, alternatively relies on the facially valid Agreement and Addendum in determining the contractual obligations of the parties.

³ The Complaint also seeks punitive damages and, in the alternative to actual damages calculated by reference to the relevant contract, the fair value for Plaintiff's services. Plaintiff is not seeking these additional and alternative remedies in its Motion.

that actual damages are due by Defendant. As to the amount of damages, the Complaint states that Defendant owes Plaintiff \$75,075.93 as of August 12, 2010, with interest accruing thereon at 13 percent per annum, per the terms of the relevant contract. (Doc. 1, ¶ 20.) The factual support for this calculation is supplied in the Affidavit of Kevin Alexy (Doc. 11-1). Based on the allegations in the Complaint and the aforementioned Affidavit, the Court has sufficient information to render judgment as to the actual damages without hearing.

B. The Agreement states that Defendant will “pay reasonable attorney’s fees and all costs of collection”. (Exhibit 1 to Doc. 11-1, ¶ 14.) The attorneys’ fees and costs incurred in this action to date, and recoverable from Defendant, total \$9,634.05. This represents \$7,006.51 in fees and \$2,627.54 in costs. Factual support for these calculations is supplied in the Affidavit of Rebecca L. Avitia (Doc. 11-2). Said fees and costs are reasonable in light of the circumstances of this case, as supported by the Affidavit of Thomas P. Guley (Doc. 11-3). Therefore, the Court has sufficient information to render judgment as to the additional damages based on attorneys’ fees and costs without hearing.

THEREFORE, IT IS HEREBY ORDERED that default judgment is entered in favor of Plaintiff Zimmerman Consulting, Inc. dba Sandhill Child Development Center and against Defendant Justin Williams in the amount of \$75,075.93 as of August 12, 2010, plus \$9,634.05 in attorneys’ fees and costs, plus pre- and post-judgment interest at a rate of 13 percent per annum.

[Handwritten initials]
UNITED STATES DISTRICT JUDGE

Submitted by:

BANNERMAN & JOHNSON, P.A.

By /s/ Rebecca L. Avitia
Thomas P. Gulley
Rebecca L. Avitia
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CRISTINA A. JACOBO, Clerk of the Court
[Signature]

I hereby certify that the enclosed is a true and correct copy of a document or an electronic docket entry on file at the United States District Court for the District of Utah.

of page: 5
Date: 5/23/11
MARK JONES, CLERK
Deputy Clerk
DISTRICT COURT