

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO**

In re:)	
)	
COOL FROOTZ, LLC,)	Case No. 18-18234-KHT
)	
Debtor.)	Chapter 7
_____)	
)	
HARVEY SENDER, Chapter 7 Trustee,)	Adv. Proc. No. 20-01044-KHT
Plaintiff,)	
v.)	
)	
GENISTA BIOSCIENCES, LLC.,)	
Defendant.)	

ORDER GRANTING TRUSTEE’S MOTION FOR DEFAULT JUDGMENT

THIS MATTER having come before the Court on the Motion for Default Judgment of Harvey Sender, Chapter 7 Trustee for the estate of Cool Frootz, LLC (“Debtor”) against Genista Biosciences, LLC (the “Defendant”), the Court having reviewed the Motion, supporting documents and affidavits, does hereby

FIND that on February 14, 2020, the Trustee effected service on the Defendant as required by Fed.R.Bankr.P. 7004(b)(1), by serving it with a copy of the Complaint and Summons, among other documents. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1334(b) and 28 U.S.C. §§157(a) and (b)(1). This is a core proceeding. Venue is proper in this jurisdiction pursuant to 28 U.S.C. § 1409 as the Debtor filed for relief in the State of Colorado. The Court further

FINDS that pursuant to Fed.R.Bankr.P. 7012(a), the Defendant’s answer or other response to the Plaintiff’s Complaint was due within 30 days after service of the Complaint. Such date was March 16, 2020. The Defendant has failed to answer or otherwise respond to the Plaintiff’s Complaint. The Court further

FINDS that the Defendant is not an individual, and therefore the protections of the Servicemembers Civil Relief Act of 2003, 50 App. U.S.C. § 501, *et seq.*, do not apply. The Court further

FINDS the following:

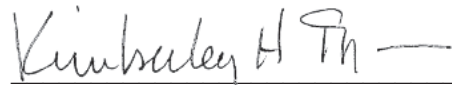
1. The Debtor filed for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) on September 20, 2018 (“Petition Date”). The case was converted to a Chapter 7 proceeding by order dated February 15, 2019.
2. The Trustee is the duly appointed and acting trustee in this case.
3. According to the Debtor’s schedules, the Debtor made payments to the Defendant in the 90-days prior to the Petition Date in the amount of \$6,940.75.
4. The payments from the Debtor to the Defendant constitute a transfer pursuant to 11 U.S.C. § 547.
5. Within the 90-days prior to the Petition Date, the sum of \$6,940.75 was paid by the Debtor to the Defendant (the “Transfers”).
6. Pursuant to 11 U.S.C. § 547(f), the Debtor is presumed insolvent at the time the Transfers were made.
7. The Transfer constitute a transfer of the Debtor’s property within the meaning of 11 U.S.C. §§ 101(54) and 547.
8. The payment made by the Debtor to the Defendant was made to or for the benefit of the Defendant in its capacity as a creditor of the Debtor.
9. The payment made by the Debtor to the Defendant was made for or on account of an antecedent debt owed by the Debtor before the Transfers were made.
10. The payment made by the Debtor to the Defendant was made while the Debtor was presumed insolvent.
11. The payment made by the Debtor to the Defendant caused the Defendant to receive more than the Defendant would have received if:
 - a. The case was filed under Chapter 7 of the Bankruptcy Code;
 - b. The transfers had not been made; and
 - c. The Defendant received payment of the debt to the extent provided by the provisions of the Bankruptcy Code.
12. The Transfers made within 90-days of the Petition Date, from the Debtor to the Defendant, are therefore avoidable under 11 U.S.C. § 547(b).
13. The Defendant is the initial transferee of the Transfers.
14. To the extent the Transfers are avoided, pursuant to 11 U.S.C. § 550, the Trustee is entitled to:
 - a. Recover from the Defendant the property transferred; or,

- b. The value of the property transferred at the time the Debtor filed for relief.
15. Thus, the Trustee is entitled to recover the Transfers from the Defendant in the sum of \$6,940.75.

IT IS THEREFORE ORDERED that the clerk shall enter a separate judgment in favor of Plaintiff, **Harvey Sender**, and against Defendant **Genista Biosciences, LLC** in the principal amount of \$6,940.75 which, pursuant to 11 U.S.C. § 551 shall be preserved for the Debtor's bankruptcy estate and pursuant to 11 U.S.C. § 542 shall be turned over to the Trustee, together with interest on the judgment at the prevailing federal statutory rate from the date of the filing of the Plaintiff's Complaint.

DATED this 6th day of January, 2022.

BY THE COURT:



Honorable Kimberley H. Tyson
U.S. BANKRUPTCY JUDGE