

IN DISTRICT COURT, COUNTY OF CASS, STATE OF NORTH DAKOTA

<p>John Doe, Plaintiff, v. Ed Falk, Defendant.</p>	<p>File No. 09-05-C-00543</p> <p>PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR ENTRY OF A DEFAULT JUDGMENT AND PROTECTIVE ORDER</p>
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INTRODUCTION

Plaintiff John Doe submits this memorandum of law in support of its motion for a default judgment and Protective Order.

STATEMENT OF FACTS

Defendant Falk was served with the Summons and Complaint on August 16, 2005 at 8:57 p.m. Affidavit of Robert Ronald.¹ Although six weeks have passed since service was effected, Falk has failed to interpose an answer to the Complaint or serve or file any responsive pleading. Affidavit of Christopher J. Harristhal in Support of Motion for Default Judgment Against Defendant Falk, October 21, 2005 ("Harristhal Aff."), Exhibit A. Because no answer has been served, entry of a default judgment against Falk is now timely.

The Complaint asserts claims for defamation, tortious interference, intentional and negligent infliction of emotional distress and false light invasion of privacy. Complaint. The Complaint seeks damages and injunctive relief. *Id.*

¹ A copy of Mr. Ronald's affidavit is attached as Exhibit A to the affidavit of Chris Harristhal. As noted in Mr. Harristhal's affidavit, the original affidavit of service was already filed with the Court.

ARGUMENT

I. The Court Should Find Falk in Default.

This court should find Falk in default due to his failure to answer the Complaint, and entertain a motion for judgment pursuant to N.D.R Civ.P. 55 (a). Rule 55 permits the court to enter judgment by default against a party who fails to plead or otherwise appear in response to a complaint. Where the defendant is in default, and the sum to which the Plaintiff is entitled is not made certain by computation, the court is to require proof enabling the court to determine and grant the relief to which the Plaintiff is entitled. N.D.R. Civ.P. 55(a)(2). Specifically, the rule permits the court to hear the evidence and assess damages. N.D.R. Civ.P. 55(a)(2)(A). The immediate and first step to be taken is to find Falk in default.

Following a finding of default, this Court should set the matter of damages and other relief on for a hearing before the Court. At that time, the plaintiff can present such evidence as necessary to demonstrate its entitlement to equitable or legal relief i.e., injunctive relief and damages.

II. The Court Should Issue A Protective Order.

At a hearing on the issue of damages, the plaintiff will have to provide, at least by of affidavit, a description of damages and explain the need for injunctive relief, i.e. issuance of a retraction by Falk and the removal of the Falk Site. Complaint. The plaintiff in the case has proceeded under the auspices of "John Doe" in order to protect against further damage and injury flowing from the defamatory statements made about the plaintiff by Falk. Requiring the plaintiff to publicly reveal his identity would reward Falk with further damage to the plaintiff's reputation. A protective order should issue so as to prevent that additional injury.

To provide a complete basis for an award of damages, the plaintiff will need to identify himself to the court. He will also have to describe how he has been injured, and reveal

information about the economic impact of Falk's unlawful activity. The plaintiff's financial situation is also confidential, and revealing the impact of Falk's conduct on the plaintiff's business would violate his privacy. The Court should protect that information from public disclosure.

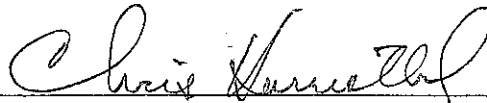
There is every reason to believe that any information the plaintiff serves in this case will be published on the Falk Site unless Falk is proscribed from doing so by court order. Any affidavits and exhibits that reflect injury to the plaintiff would almost certainly be published on the Falk Site in an effort to further embarrass and humiliate the plaintiff. This proceeding should be used as device to further injure the plaintiff.

The protective order should allow the plaintiff to file supporting affidavits under seal. It should further mandate that the defendant not share the sealed papers with any third parties, or face contempt sanctions. If Falk, despite refusing to participate in this proceeding to date, should elect to file any response, then his filings must similarly be filed under seal. Any filings which could identify the plaintiff or otherwise result in the disclosure of information about the plaintiff, regardless of which party files them, should be under seal. Finally, the hearing on damages should be closed to the extent this information is discussed in the court room.

CONCLUSION

Defendant Falk has failed to answer or otherwise respond to the complaint. This Court should find him in default, and set a hearing for a determination of the relief, including damages, to be awarded Sierra. The Court should require that all filings which could reveal the identity of the plaintiff or confidential information about the plaintiff, such as damages of the plaintiff, be filed under seal. The hearing on damages should also be closed, in the interest of protecting the plaintiff from further harm.

Dated: October 21, 2005



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