

**COPY**

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF CASS

EAST CENTRAL JUDICIAL DISTRICT

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John Doe,

Plaintiff,

vs.

Civil No. 09-05-C-543

Ed Falk,

Hon. Frank Racek

Defendant.

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STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF CASS

EAST CENTRAL JUDICIAL DISTRICT

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Sierra Corporate Design, Inc.,

Plaintiff,

vs.

Civil No. 09-05-C-01660

David Ritz and Ed Falk,

Hon. John C. Irby

Defendants.

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**NOTICE OF MOTION AND MOTION TO CONSOLIDATE BY ED FALK AND  
MOTION TO CONTINUE SIERRA CORPORATE'S EVIDENTIARY HEARING FOR  
DEFAULT JUDGMENT AGAINST DEFENDANT ED FALK**

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YOU ARE HEREBY NOTIFIED that this Motion to Consolidate is submitted to the Court pursuant to Rule 3.2 of the North Dakota Rules of Court, and that you have 10 days after service of the accompanying brief in which to serve and file an answer brief and any other supporting papers.

PLEASE TAKE NOTICE that Defendant Ed Falk ("Falk") hereby moves the Court pursuant to North Dakota Rule of Civil Procedure 42, for the following relief:

1. Falk respectfully moves the Court for an Order consolidating the above-captioned cases for purposes of Defendant Ed Falk's Motion to Dismiss based on lack of personal jurisdiction, and for purposes of pretrial discovery and trial.

2. To continue the evidentiary hearing on Sierra Corporate's default judgment against Defendant Falk until this Court has ruled on the issue of personal jurisdiction.

In support of its motion, Defendant Falk submits the following:

1. On August 16, 2005, Plaintiff John Doe served its Complaint on Defendant Falk. The John Doe Complaint asserts claims of defamation, intentional and negligent interference with business, intentional and negligent infliction of emotional distress, and invasion of privacy/false light.

2. On August 16, 2005, Plaintiff Sierra Corporate Design, Inc. ("Sierra") served its First Amended Complaint on Falk. Sierra's First Amended Complaint asserts claims of computer crime and trespass to chattels.

3. The facts and parties in the John Doe and Sierra cases are virtually identical. One distinction is that Defendant David Ritz is not a party in the John Doe v. Ed Falk matter. However, the Plaintiffs are the same party and the conduct resulting in the claims involves common questions of law and fact.

4. On October 16, 2005, Plaintiff Sierra's Motion for Entry of Default Judgment and Protective Order came on for hearing before the Honorable John C. Irby against Defendant Falk.

Judge C. Irby entered Default Judgment against Defendant Ed Falk and scheduled and evidentiary hearing for November 16, 2005 at 10:15 a.m. for the purposes of addressing damages.

5. On November 4, 2005, Defendant Falk through the undersigned legal counsel made an appearance in both cases.

6. On November 9, 2005, Plaintiff John Doe's Motion for Entry of Default Judgment and Protective Order came on for hearing before the Honorable Frank Racek. Judge Racek denied Plaintiff's Motion for Default Judgment and Protective Order, and gave Defendant Ed Falk until November 23, 2005 to file his Motion to Dismiss for lack of personal jurisdiction.

7. The John Doe v. Ed Falk case was filed first with the Court and accordingly the Honorable Frank Racek is the appropriate judge to address the issue of Falk's Motion to Consolidate.

8. Judge Racek ordered that Defendant Falk file with the Court on or before November 23, 2005 his Motion, Brief, and supporting documents to dismiss based on lack of personal jurisdiction. The issue of personal jurisdiction in both of these cases and the law applying thereto is identical. Therefore, it is most appropriate for the Court to consolidate the cases and hold one hearing on Falk's Motion to Dismiss for lack of personal jurisdiction at the earliest available date.

9. It is also appropriate for the Court to consolidate the cases for not only the hearing on Falk's Motion to Dismiss for lack of personal jurisdiction, but for also pretrial discovery and trial and the common facts and parties.

10. This motion is made in good faith and not for purposes of delay. Falk does not believe that the brief continuance requested for the November 16 evidentiary hearing will prejudice the position of any party.

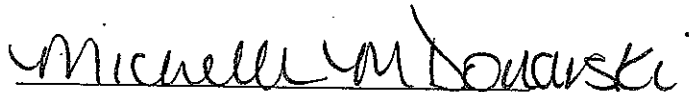
11. As the cases arise from the same set of facts (the Defendants statements that Plaintiffs owned and or operated illicit porn sites and/or internet scams), involve common questions of law, involve the same parties, and would require the same witnesses, written discovery, and other evidence, it would be a waste of judicial resources to require two separate, but largely overlapping, Motions, briefings, hearings, pretrial discovery, trials, and ultimately decisions on the results or rulings from different trial on virtually a similar set of facts.

12. Consolidation is also appropriate as it prevents inconsistent results or rulings from different trial court judges and/or juries and the similar parties and facts.

WHEREFORE, Falk respectfully requests that the Court enter an order granting its motion to consolidate in accordance with N.D. R. Civ. P. 42, and continue the evidentiary hearing until the issue of personal jurisdiction can be addressed by the Court.

Dated this 11 day of November, 2005.

By:



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