

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

PATRICIA SMITH,
San Diego, California

and

CHARLES WOODS,
Portland, Oregon

Plaintiffs,

v.

HILLARY RODHAM CLINTON,
3067 Whitehaven St. NW
Washington, D.C., 20008

Defendant.

PLAINTIFFS' MOTION FOR DEFAULT JUDGMENT

Plaintiffs Patricia Smith and Charles Woods ("Plaintiffs") respectfully move this honorable Court for default judgment against Defendant Hillary Clinton ("Defendant Clinton") pursuant to Federal Rule of Civil Procedure 55(b)(2) for the reasons set forth in the accompanying Memorandum of Points and Authorities. Defendant Clinton opposes this motion.

Dated: October 10, 2016

Respectfully submitted,

/s/ Larry Klayman

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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS’
MOTION FOR DEFAULT JUDGMENT**

I. INTRODUCTION.

Plaintiffs, Charles Woods and Patricia Smith, move for a default judgment against Defendant Hillary Clinton. Simply put, Defendant Hillary Clinton lied about proper service of the Complaint as set forth in Plaintiffs’ Opposition to Defendant Hillary Clinton’s Motion to Vacate Default, willfully evaded service of process, and despite this, to this day, has not bothered to file an answer or responsive pleading to the Complaint. Defendant Clinton has defaulted.

It is clear, as she has flouted the process of this Court, that Defendant Clinton has little to no respect for it and the rule of law. Indeed, while not answering or filing a responsive pleading to the Complaint, Defendant Clinton and her counsel have found the time to challenge the assignment to this Court to this important case, which involves the deaths of American heroes who died needlessly in Benghazi, Libya because of the "extremely careless" and illegal use of

Defendant Clinton's private email server, which, as FBI Director Comey admitted, was likely compromised to foreign adversaries.

To add insult to injury here, Defendant Clinton flouts this Court by intentionally and continuously failing to file an answer or other responsive pleading to the Complaint that she was served with on August 11, 2016. She has even refused to file an answer or even a responsive pleading since the clerk of the court entered a default against her on September 9, 2016, having again lied, this time to this Court about having not been served. The mistruths and lies of Defendant Hillary Clinton continue unabated. As a result of Defendant Clinton's untruthful conduct and her failure – two months after Plaintiffs filed the Complaint – to respect this Court's process and file an answer or responsive pleading, a default judgment should be entered on liability and the case should continue to trial to determine the amount of damages to remedy the wrongful death of Plaintiffs' sons and the defamation of Plaintiffs themselves. Attached and incorporated by reference is Plaintiffs' Opposition to Defendant Hillary Clinton's Motion to Vacate Default, which details Defendant Clinton's and her counsel's flouting of this Court's process, for which entry of a default on liability is warranted at this time. *See Exhibit 1.*

II. THE LAW.

After a default has properly been entered by the Clerk, such as here, a party may move the court for a default judgment. Fed. R. Civ. P. 55(b)(2). "The determination of whether default judgment is appropriate is committed to the discretion of the trial court." *Int'l Painters & Allied Trades Indus. Pension Fund v. Auxier Drywall, LLC*, 531 F. Supp. 2d 56, 57 (D.D.C. 2008). Upon entry of default by the clerk of the court, the "defaulting defendant is deemed to admit every well-pleaded allegation in the complaint." *Int'l Painters & Allied Trades Indus. Pension Fund v. R.W. Amrine Drywall Co., Inc.*, 239 F. Supp. 2d 26, 30 (D.D.C. 2002).

Accordingly, on a motion for default judgment, a plaintiff need only show (a) the clerk of the court entered a default, (b) that the well-pleaded facts are sufficient to establish the legal requirements of the causes of action pled by plaintiff, and (c) that there exists an adequate basis for the claimed damages.

III. DISCUSSION.

A. Proper Service Was Effectuated on Defendant Hillary Clinton And the Clerk of the Court Entered Default Against Hillary Clinton.

Plaintiffs have fulfilled the prerequisite for moving for a default judgment by requesting that the clerk of the court enter default against Defendant Hillary Clinton pursuant to Rule 55(a) of the Federal Rules of Civil Procedure. *See R.W. Amrine Drywall*, 239 F. Supp. 2d at 30. The clerk of the court entered default on September 9, 2016. [Dkt. #9]. Default judgment should be entered against Defendant Hillary Clinton pursuant to Fed. R. Civ. P. 55(b) because she failed to plead or otherwise defend this action. *Id.* Having evaded service of process and then lied about proper service, Defendant Hillary Clinton still has not timely filed any answer or responsive pleading to the Complaint. Federal Rule of Civil Procedure 12(a)(1)(A)(i) provides that a defendant shall serve its answer within 21 days of service of the summons and complaint. Here, the summons and complaint were served on Defendant Hillary Clinton on August 11, 2016. Defendant Hillary Clinton's answer was thus due on September 1, 2016, since she was served in her private capacity. However, to date, no answer or other responsive pleading to the Complaint has been filed. Defendant Hillary Clinton's failure to defend is her own decision. As such, Plaintiffs are entitled to default judgment against her.

Importantly, in addition to the merits of Defendant Clinton's default, this Court and the U.S. Court of Appeals for the District of Columbia Circuit have ruled that noncompliance with the litigation process and "willfulness, bad faith, or fault" warrants a default judgment. *Founding*

Church of Scientology, Inc. v. Webster, 802 F.2d 1448, 1458 (D.C. Cir. 1986). Here, Defendant Clinton is a lawyer herself. She is being represented by a prominent law firm which specializes in litigation and trial work, and she claims to be a public servant. Yet she has no respect for this Court or the rule of law. At the time Defendant Clinton moved to set aside the default, she should have filed an answer or a responsive pleading to the Complaint. She is only attempting to delay this serious matter to get passed the election in November. Plaintiffs are not interested in the election; only justice, but justice delayed is justice denied. Plaintiffs have two dead sons, and as Defendant Clinton has callously and defiantly stated before, “what difference at this point does it make?”

B. Plaintiffs Have Stated Valid Claims Against Defendant Hillary Clinton and Her Failure to Plead or Otherwise Defend Against Plaintiffs’ Complaint Warrants An Award of Default Judgment.

Where, as here, a complaint alleging wrongful death, defamation, false light, negligence, intentional infliction of emotional distress, and negligent infliction of emotional distress goes unanswered, “a party’s default is deemed a concession of all well-pleaded allegations of liability.” *United Greeks, Inc. v. Klein*, 2000 U.S. Dist. LEXIS 5670, 2 (N.D.N.Y. 2000); *Carazani v. Zegarra*, 972 F. Supp. 2d 1 (D.D.C. 2013) (“ . . . default judgment establishes the defaulting party’s liability for every well-pleaded allegation in the complaint . . .”) *see generally* Fed. R. Civ. P. 8(d) (averments in a pleading to which a responsive pleading is required are admitted if not denied); Wright & Miller, *Federal Practice and Procedure* Civil 2d § 1279.

First, Plaintiffs sufficiently pleaded a claim for wrongful death throughout the Complaint. *See* Complaint at ¶¶ 9, 10, 12, 15, 16, 17, 25-31 (“Using the information that was obtained from Defendant Clinton’s “extremely careless” handling of confidential and classified government information, Islamic terrorists were able to locate Ambassador Christopher Stevens, Sean Smith,

and Tyrone Woods, and subsequently orchestrate, plan, and execute the Benghazi Attack that claimed the lives of Sean Smith and Tyrone Woods.”).

Second, Plaintiffs sufficiently pleaded claims for defamation and false light throughout the Complaint. *See* Complaint at ¶¶ 23, 24, 32-42 (“Defendant Clinton has negligently, recklessly, and/or maliciously defamed Plaintiffs by either directly calling them liars, or by stating that they are liars, in order to protect and enhance her public image and intimidate and emotionally harm and silence them to not speak up about the Benghazi attack [during her presidential campaign] on at least four separate occasions.”).

Third, Plaintiffs sufficiently pleaded a claim for negligence throughout the Complaint. *See* Complaint at ¶¶ 7, 17, 43-48. (“The deaths of Sean Smith and Tyrone Woods were directly and proximately caused by the negligent and reckless handling of confidential and classified government information by Defendant Clinton, in that Defendant Clinton compromised the location of Ambassador Christopher Stevens and thus the U.S. Department of State and the covert and other government operations in Benghazi, Libya that the deceased were a part of.”).

Fourth, Plaintiffs sufficiently pleaded claims for intentional infliction of emotional distress and negligent infliction of emotional distress. *See* Complaint at ¶¶ 23, 49-56. (“Defendant Clinton engaged in extreme and outrageous conduct by using her private e-mail server to send and receive confidential and classified government information, often concerning matters of national security, including the location of Ambassador Christopher Stevens and thus the U.S. State Department and the covert and other government operations in Benghazi, Libya that the deceased were a part of.”).

C. There Is An Adequate Basis For the Claimed Damages.

Plaintiffs request that this Court hold an evidentiary hearing to determine the relief sought for general, special, actual, compensatory and punitive damages.

IV. CONCLUSION

“[T]he default entry and judgment play an important role in the maintenance of an orderly, efficient judicial system . . . [They] represent[] a means of encouraging an unwilling or uncooperative party to honor the rules established for litigation in the federal courts and provide[] the nondefaulting party an expeditious path to follow when an adversary does not do so or simply abandons the contest.” 10A Wright & Miller, Federal Practice and Procedure § 2693 (3d ed. 2006). Defendant Clinton has a documented history of flouting courts and their process as well as the rule of law in general. She should not be permitted to dictate to this Court the rules of service of process and then lie about it.

For the foregoing reasons, Plaintiffs respectfully request that their Motion for Default Judgment be granted and this Court hold oral argument at the earliest practicable date.¹

Dated: October 10, 2016

Respectfully submitted,

/s/ Larry Klayman

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Attorney for Plaintiffs

¹ Plaintiffs’ counsel will be in the District of Columbia on or about October 28, 2016 before 10:00 a.m., October 31, 2016, and November 1, 2016.

CERTIFICATE OF SERVICE

I, Larry Klayman, counsel for Plaintiffs, hereby certify that on this day, October 10, 2016, a copy of the foregoing was filed via this Court's ECF system and served upon all parties and/or counsel of record.

/s/ Larry Klayman
Larry Klayman

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[PROPOSED] ORDER

Upon consideration of Plaintiffs' Motion for Default Judgment, the Court having considered same, and all papers and argument in connection therewith, orders as follows:

It is ORDERED AND ADJUDGED that Plaintiffs' Motion for Default Judgment for Liability is GRANTED and oral argument on Plaintiffs' Motion for Default Judgment is set for _____, 2016 at _____ a.m/p.m.

Entered this _____ day of _____, 2016.

SO ORDERED,

Hon. Royce C. Lamberth