

IN THE DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA

NORFOLK DIVISION

CASE NO. 2:23-CV-351-AWA-LRL

JACOB GAVIN HILES,

Plaintiff,

v.

CABLE NEWS NETWORK, INC.,

Defendant.

PLAINTIFF'S REQUEST FOR CLERK'S ENTRY OF DEFAULT

Plaintiff, Jacob Gavin Hiles (“Hiles” and/or “Plaintiff”), by and through his undersigned counsel and pursuant to Fed. R. Civ. P. 55(a) and Local Rule 7(E), hereby files this Request for Clerk’s Entry of Default against Defendant, Cables News Network, Inc. (“CNN” and/or “Defendant”), and in support thereof states:

BACKGROUND

1. On August 14, 2023, Plaintiff filed his Amended Complaint asserting claims for defamation by implication (Count I) and defamation *per se* (Count II) against Defendant and seeking \$100 million in compensatory damages. *See* Amend. Cmpl. (Dkt. 9).

2. On August 28, 2023, Defendant filed its Motion to Dismiss the Amended Complaint with prejudice (“Defendant’s Motion” and/or “the Motion”) (Dkt. 12) along with a Proposed Order Granting Defendant’s Motion (“Proposed Order”) (Dkt. 12-4).

3. On September 11, 2023, Plaintiff filed his Response in Opposition to Defendant’s Motion to Dismiss the Amended Complaint requesting the Court “deny Defendant’s Motion to Dismiss in its entirety” Pl. Resp. at 26-27 (Dkt. 15).

4. On September 18, 2023, Defendant filed a Reply in Further Support of Its Motion to Dismiss Plaintiff’s Amended Complaint reiterating its request for entry of an order “dismissing this action with prejudice” Def. Reply at 9 (Dkt. 16).

5. In accordance with Local Rule 7(E), Defendant, as the moving party, was required to “set the motion for hearing or arrange with opposing counsel for submission of the motion without oral argument . . . within thirty (30) days after the date on which the [Motion was] filed.” E.D. Va. Loc. R. Prac. 7(E).

6. Additionally, “[b]efore endeavoring to secure an appointment for a hearing” on the Motion or arranging with the Court for the Motion to be decided on the papers, Defendant’s counsel was required to “meet and confer in person or by telephone” with Plaintiff’s counsel “in a good-faith effort to narrow the area[s] of disagreement.” *Id.*

7. To date, Defendant’s counsel has not satisfied any of the requirements imposed by Local Rule 7(E) despite more than **140 days** having passed from the date Defendant’s Motion was filed. Defendant’s counsel has also not had any communication with Plaintiff’s counsel since filing the Motion nearly five months ago. *Id.*

8. As a result of Defendant’s inaction and failure to comply with the meet and confer requirements and scheduling procedures imposed by Local Rule 7(E) “within thirty (30) days after the date” Defendant’s Motion was filed (i.e., August 28, 2023), the Motion is deemed withdrawn, and Defendant has defaulted.

9. Indeed, Local Rule 7(E) makes clear that “a motion shall be deemed withdrawn if the movant does not set it for hearing (or arrange to submit it without hearing) within thirty (30) days after the date on which the motion is filed.” E.D. Va. Loc. R. Prac. 7(E).

10. Fed. R. Civ. P. 55(a) then provides that “[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, **the clerk must enter the party’s default.**” *Id.* (emphasis added); *see also* Jan. 19, 2024, Affidavit of Alexander H. Bell, Ex. A.

11. Accordingly, Plaintiff, Jacob Hiles, respectfully requests the Clerk enter a default against Defendant, Cables News Network, Inc., pursuant to Fed. R. Civ. P. 55(a), Local Rule 7(E), and based on the foregoing facts, which are verified by the attached affidavit of Plaintiff’s co-counsel, Mr. Alexander Bell, in accordance with Fed. R. Civ. P. 55(a).

Dated: January 19, 2024

Respectfully submitted,

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By: /s/ Alexander H. Bell
ALEXANDER H. BELL
Virginia Bar No. 84859

By: /s/ Donald J. Hodson
DONALD J. HODSON
Florida Bar No. 120256

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was filed this 19th day of January 2024, and electronically served via the Court's e-filing system on the following individual(s): Jay Ward Brown, Esq., Ballard Spahr, LLP, 1909 K Street NW, 12th Floor, Washington, D.C., 20006, brownjay@ballardspahr.com, miskinm@ballardspahr.com, and russelll@ballardspahr.com.

By: /s/ Alexander H. Bell
ALEXANDER H. BELL

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**AFFIDAVIT IN SUPPORT OF PLAINTIFF'S
REQUEST FOR CLERK'S ENTRY OF DEFAULT**

ALEXANDER H. BELL ("Affiant"), hereby declares under penalty of perjury that the facts, statements, and information in *Plaintiff's Request for Clerk's Entry of Default* and in this *Affidavit in Support of Plaintiff's Application for Clerk's Entry of Default* are true and correct:

1. My name is Alexander H. Bell.
2. I am co-counsel for Jacob Gavin Hiles ("Hiles" and/or "Plaintiff") in this lawsuit.
3. I am licensed to practice law in Virginia and in the U.S. District Court for the

Eastern

District of Virginia.

4. I hereby request the Clerk of this Court enter a default against Defendant, Cable News Network, Inc. ("CNN" and/or "Defendant"), in this case in accordance with Fed. R. Civ. P. 55(a) and Va. Loc. R. Civ. P. 7(E) based on the following facts:

Jacob Gavin Hiles v. Cable News Network, Inc.
U.S. District Court for the Eastern District of Virginia | Case No. 2:23-CV-351-AWA-LRL

- A. On August 14, 2023, Plaintiff filed his Amended Complaint in this case (“Amended Complaint” and/or “Plaintiff’s lawsuit”) (Dkt. 9).
- B. Defendant was required to file a response to Plaintiff’s lawsuit “within the time remaining to respond to the original pleading or within 14 days after service of the amended pleading, whichever is later.” Fed. R. Civ. P. 15(a)(3).
- C. On August 28, 2023, Defendant filed a Motion to Dismiss the Amended Complaint (“Motion to Dismiss”) along with Defendant’s Proposed Order Granting Defendant’s Motion to Dismiss (Dkt. 12).
- D. On September 11, 2023, Plaintiff filed a Response in Opposition to Defendant’s Motion to Dismiss (Dkt. 15).
- E. On September 18, 2023, Defendant filed a Reply in Further Support of Its Motion to Dismiss (Dkt. 16).
- F. More than 140 days have passed since Defendant’s Motion to Dismiss was filed in this case, which is enrolled in the Court’s “Rocket Docket” case management system (Dkt. 12).
- G. To date, Defendant’s counsel has not had any communication or contact of any kind with Plaintiff’s counsel since before filing Defendant’s Motion to Dismiss nearly five months ago.
- H. Defendant’s counsel has similarly failed to schedule Defendant’s Motion to Dismiss for hearing or otherwise arrange with the Court to decide the motion without a hearing.

- I. Defendant has thus violated Local Rule 7(E), which requires the moving party to “set the motion for hearing or arrange with opposing counsel for submission of the motion without oral argument . . . within thirty (30) days after the date on which the motion was filed.” Va. Loc. R. Civ. P. 7(E).
- J. As a result of Defendant’s failure to satisfy the requirements in Local Rule 7(E), Defendant’s motion was deemed withdrawn as of September 29, 2023, or “thirty (30) days after the date on which the motion [was] filed.” See Va. Loc. R. Civ. P. 7(E).
- K. As further consequence, Defendant defaulted by virtue of failing to file any responsive pleadings in this action or otherwise defend against Plaintiff’s claims once Defendant’s Motion to Dismiss was withdrawn. See Fed. R. Civ. P. 55(a).

5. I hereby certify that copies of this Affidavit and Plaintiff’s Request for Clerk’s Entry of Default were filed and electronically served on Defendant’s counsel in this case in accordance with the Local Rules and Federal Rules of Civil Procedures.

Signed this 19th day of January, 2024.


 Alexander H. Bell (VSB No. 84859)
 Counsel for Jacob Gavin Hiles

Sworn to and subscribed before me this 19th day of December, 2019


 Notary Public



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_____ /

ENTRY OF DEFAULT

It appearing that the defendant's Motion to Dismiss the Amended Complaint with prejudice was filed on August 28, 2023 and that defendant's Motion to Dismiss has been withdrawn for failing to set it for a hearing or arranging to submit it without a hearing within 30 days as required by law;

Therefore, upon request of the plaintiff, default is hereby entered against the defendant, Cable News Network, Inc., as provided in Rule 55(a), Federal Rules of Civil Procedure.

Fernando Galindo, CLERK

By _____
Deputy Clerk