

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT
Case Type: Products Liability

Court File No.: [REDACTED]
Judge: Honorable [REDACTED]

[REDACTED]
Plaintiff,

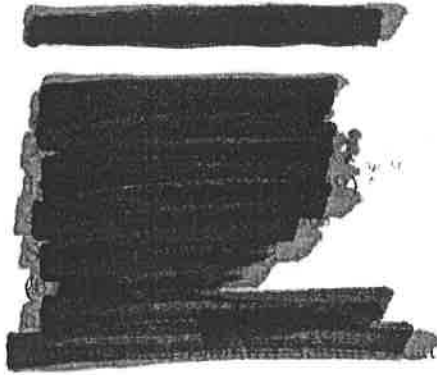
v.

[REDACTED]
Defendants.

**NOTICE OF MOTION & MOTION FOR DEFAULT JUDGMENT AGAINST
DEFENDANT [REDACTED]**

PLEASE TAKE NOTICE, that at hearing to be held before the Honorable [REDACTED] on [REDACTED], at the Hennepin County Government Center, 300 South Sixth Street, Minneapolis, MN 55487, Plaintiff [REDACTED] will move the court for Default Judgment on all counts of Plaintiff's Complaint against Defendant [REDACTED] pursuant to Minn. R. Civ. Pro. 55.01 and Article 15, Paragraph 2 of The Hague Convention. Plaintiff is entitled to default judgment against Defendant [REDACTED] because this Defendant has failed to answer or otherwise appear in this action as required by the Minnesota Rules of Civil Procedure. This motion is based upon the Memorandum of Law, Affidavits, and Exhibits that have been and will be filed in accordance with General Rule of Practice 115, the arguments of counsel at hearing, and all the files, records, and proceedings herein.

Dated: 10/19/17



STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT
Case Type: Products Liability

Court File No.: [REDACTED]
Judge: Honorable [REDACTED]

[REDACTED]
Plaintiff,

v.

[REDACTED]
Defendants.

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR DEFAULT
JUDGMENT AGAINST DEFENDANT [REDACTED]**

INTRODUCTION

Plaintiff [REDACTED] requests an Order for Default Judgment against [REDACTED]
[REDACTED] as provided under Rule 55.01 of the Minnesota Rules of Civil
Procedure and Article 15, Paragraph 2 of The Hague Convention.

FACTS

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

ARGUMENT

I. Plaintiff is Entitled to Default Judgment Against [REDACTED]

Rule 55.01 of the Minnesota Rules of Civil Procedure provides, in relevant part, as follows:

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend within the time allowed therefore by these rules or by statute, and that fact is made to appear by affidavit, judgment by default shall be entered against that party as follows:

- (b) ...the party entitled to a judgment by default shall apply to the court therefor.... If the action is one for the recovery of money only, the court shall ascertain, by a reference or otherwise, the amount to which the plaintiff is entitled, and order judgment therefor.

- (d) When service of the summons has been made by published notice...no judgment shall be entered on default until the plaintiff shall have filed a bond, approved by the court, conditioned to abide such order as the court may make concerning restitution of any property collected or obtained by virtues of the judgment in case a defense is thereafter permitted and sustained; provided, that in actions involving titled to real estate or to foreclose mortgages thereon such bond shall not be required.

Minn. R. Civ. P. 55.01(b) and (d). Default judgment may be entered against "a party who fails to plead or otherwise defend a claim within the time allowed by law." *Doc. v. Legacy Board of Minn., Inc.*, 504 N.W.2d 527, 528 (Minn. App. 1993).

Because of the failure of Defendant to respond or otherwise defend against the allegations contained in the Summons and Complaint, Plaintiff is entitled to default judgment against the Respondent under Rule 55.01 of the Minnesota Rules of Civil Procedure for the full amount of Plaintiff's damages.

II. Defendant [REDACTED] Failure to Answer Warrants and Entry of Default Judgment

A. The Hague Convention allows for entry of default judgment under these circumstances.

Under Minn. R. Civ. Pro. 4.04(C)(1) service of process upon entities in foreign countries may be effected "by any internationally agreed means reasonably calculated to give notice, such as those authorized by The Hague Convention." The "exclusive means by which service can be accomplished in signatory states' is the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters ('Hague Convention')." See *Chowaniec v. Heyl Truck Lines*, No. 90 C 07034, 1991 WL 111156, *1 (N.D. Ill. June 17, 1991), quoting February 10, 1969, 20 U.S.T. 361, T.I.A.S. No. 6638, 658 U.N.T.S. 163.

The People's Republic of China and the United States of America are both signatories to The Hague Convention. *MacLean-Fogg Co. v. Ningbo Fastlink Equip. Co.*, No. 08 CV 2593, 2008 WL 5100414, at *2 (N.D. Ill. Dec. 1, 2008). The Hague Convention sets forth the procedures for service in foreign countries:

The Hague Convention—a multilateral treaty—is designed "to provide a simpler way to serve process abroad, to assure that defendants sued in foreign jurisdictions would receive actual and timely notice of suit, and to facilitate proof of service abroad." *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 698, 108 S.Ct. 2104, 100 L.Ed.2d 722 (1988). The Hague Convention created a central authority in each country to receive the requests for service of documents from other countries. See *id.*; Hague Convention, art. 2. It prescribes the following procedures for service of documents: After the document is received by a country's central authority, the authority follows that country's internal law to serve the

document. *See* Hague Convention, art. 5. Once served, the authority provides a certificate of service to the party requesting service. *See id.*, art. 6.

Conservatorship of Prom v. Sumitomo Rubber Indus., Ltd., 224 Wis. 2d 743, 753-754, 592 N.W.2d 657 (Ct. App. 1999).

Article 15, Paragraph 2 of allows The Hague Convention allows a United States judge to grant a default judgment, notwithstanding the absence of a proof of service, provided:

- a) The documents of suit in the action were transmitted abroad to the appropriate Central Authority for the purpose of service;
- b) A period of time in excess of six months must have lapsed since the suit documents were transmitted abroad for the purpose of service; and
- c) No certificate of any kind has been received, even though reasonable efforts have been made to obtain it through the competent authorities of the state addressed.


See Hague Convention, art. 15, ¶ 2.; *see also* T.I.A.S. No. 6638.

Plaintiff's efforts to serve Defendant per The Hague Convention meet these criteria. As explained in the Declaration of Thomas R. McLean copies of the Second Amended Summons and Complaint were forwarded to LLS, a company which serves documents abroad in conformity with The Hague Convention, On October 23, 2015. *See* Exhibit A, "McLean Dec." ¶ ¶ 2, 3. The Summons and Complaint were then shipped by LLS as a Hauge Request via Federal Express to the Chinese central authority on November 9, 2015. McLean Dec. ¶ 6. Federal Express confirmed delivery of that package to the Chinese Central Authority on November 12, 2015. *Id.*; *see also* Exhibit B.





When no response or certificate of service was received by LLS, LLS made reasonable efforts to obtain a certificate by following up and contacting the Chinese Central Authority and The Hague Conference requesting status of service on not just Plaintiff's Hague Request, but several, similar Hague Requests. *See generally* McLean Dec. The Chinese Central Authorities

mantra like response that it "is long procedure and costs time"¹ does little to update Plaintiff's counsel, or this Court, as to the status and anticipated execution of The Hague Request in this case. Since the Second Amended Summons and Complaint were: (1) transmitted abroad to the appropriate central authority; (2) over 6 months ago; (3) with no certificate of any kind having been received, despite reasonable efforts to contact the Chinese Central Authority to secure such a certificate; and (4) the failure of Defendant to plead in or defend this suit in any way, entry of default against Defendant is proper, both pursuant to Article 15, Paragraph 2 of The Hague Convention, and Minn. R. Civ. P. 55.01.

CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that the Court enter an order granting Plaintiff default judgment against Defendant on all counts of the Complaint, and award him the amount of 

Respectfully submitted,

Dated: 10/19/17

¹ See McLean Dec. ¶ 13.