

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA**

JASON HANSON, et al.,)	
)	
<i>Plaintiffs,</i>)	Civ. Action No. 3:22-cv-174
)	
v.)	TRIBAL DEFENDANTS’ OPPOSITION
)	TO MOTION FOR DEFAULT JUDGMENT
)	
JAMES PARISIEN, et al.,)	The Honorable Peter D. Welte, Chief Judge
)	
)	
<i>Defendants.</i>)	

Defendants James Parisien of the Turtle Mountain Band of Chippewa Indians’ Tribal Employment Rights Office, the Tribal Employment Rights Office (the “TERO Office”), the Turtle Mountain Tribal Court, the Turtle Mountain Appellate Court, and the Turtle Mountain Band of Chippewa Indians (the “Tribe”) (collectively, “Defendants”), respectfully oppose Plaintiffs’ Motion for Default Judgment.

ARGUMENT

Plaintiffs' Motion for Default Judgment is both procedurally and substantively meritless. First, Plaintiffs' Motion fails to follow the proper procedure required by Federal Rule of Civil Procedure 55. Federal Rule 55 allows a party to seek an entry of default, and subsequently, a default judgment, against another party who has "failed to plead or otherwise defend" a lawsuit. Fed. R. Civ. P. 55(a). Securing a default judgment is a two-step process. First, the party seeking a default judgment must file an application for entry of default with the clerk of a district court by demonstrating that the opposing party has failed to answer or otherwise respond to the complaint, and second, once the clerk has entered a default, the moving party may then seek entry of a default judgment against the defaulting party. *Id.* at (a)-(b).

Here, Plaintiffs filed what they titled "Plaintiffs' Motion for Default Judgment" asking the Court to "grant their motion for default judgment pursuant to their argument." Pls.' Mot. for Default, ECF No. 8 at 3. As the Federal Rules make clear, the clerk's entry of default and default judgment are two separate requirements. Until the clerk enters default, Plaintiffs cannot file a motion for default judgment. Yet Plaintiffs try to circumvent this procedure by skipping the clerk's entry of default in its entirety. Thus, the motion is procedurally improper.

Second, even aside from the procedural inadequacies, Plaintiffs' Motion for Default Judgment fails on the merits because Defendants have not violated the pleading deadlines required by Federal Rule of Civil Procedure 12. Rule 12(a)(1) states that in general, "[u]nless another time is specified by this rule or a federal statute ... a defendant must serve an answer ... within 21 days after being served with the summons and complaint." Fed. R. Civ. P. 12(a)(1). But Rule 12(a)(4) explains that "serving a motion under this rule alters these periods" and only "if the court denies the motion or postpones its disposition until trial, [then] the responsive

pleading must be served within 14 days after notice of the court’s action.” Fed. R. Civ. P. 12(a)(4).

Here, Plaintiffs argue that a Defendants’ Motion to Dismiss is not a “pleading” as defined by Rule 7(a), and therefore, Defendants “did not answer denying the allegations in Plaintiffs’ complaint and pursuant to Fed. R. Civ. P. 8(d), a failure to deny an allegation in a complaint is an admission of the allegation.” Pls.’ Motion for Default Judgment at 2 (cleaned up). This argument ignores the plain language of Rule 12, which tolls the deadline to file an answer to Plaintiffs’ Complaint. Defendants must only file an answer if the Court “denies the motion or postpones its disposition until trial” in which case, Defendants will have 14 days after notice of the Court’s action to serve the responsive pleading. Fed. R. Civ. P. 12(a)(4).

In sum, Defendants timely filed a Motion to Dismiss Plaintiffs’ entire Complaint. Under the Federal Rules, this Motion is a “response” that tolls the deadline to answer. Thus, default is not proper or warranted.

CONCLUSION

For the foregoing reasons, the Tribal Defendants respectfully request that this Court deny the motion for default judgment.

December 21, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 21, 2022, I electronically filed the foregoing document using the Court's CM/ECF system, which will send notification of the filing of this document to the e-mail addresses registered in the CM/ECF system, as denoted on the Electronic Mail Service List.

Dated: December 21, 2022

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