STATE OF MINNESOTA

COUNTY OF HENNEPIN

DISTRICT COURT

FOURTH JUDICIAL DISTRICT

Case Type: Personal Injury

Doe 114,

Plaintiff,

v.

Jason McLean,

Defendant.

Court File No.: 27-CV-16-1712
Judge Frank J. Magill, Jr.

ORDER GRANTING MOTIONS FOR SANCTIONS AND DEFAULT JUDGMENT

The above-entitled action came on before the undersigned Judge of the District Court on the 11th day of October, 2017, upon Plaintiff's Motions for Sanctions and Default Judgment.

Based on all the files, records, and proceedings herein, the Court makes the following:

FINDINGS OF FACT

1. In 2015 and 2016, Plaintiff and four other individuals sued Defendant Jason McLean for his sexual abuse of them as minors while a Company Actor and employee of Children's Theatre Company.

2. After multiple failed attempts to depose Defendant McLean with proper service, Plaintiff moved for an order compelling him to appear for taking of his deposition and for expenses and attorneys' fees.

3. Defendant McLean failed to respond or to appear for the hearing on July 17, 2017, on the motion.

4. On July 19, 2017 this Court ordered Defendant McLean to appear for his deposition at the law office of Jeff Anderson & Associates located in Saint Paul, Minnesota, on August 22, 2017.

5. Defendant McLean was served on July 17, 2017, with a Fifth Amended Notice of Video Deposition for August 22, 2017.

6. On July 19, 2017, Plaintiff's counsel provided Defendant McLean with a courtesy copy of the Court's order compelling him to appear for deposition.

7. On July 25, 2017, Plaintiff served on Defendant McLean Requests for Production of Documents and Requests for Admission. Plaintiff requested that Defendant McLean admit to engaging in sexual contact with her and four other Plaintiffs, who have brought related cases, when she and they were minors. A response was required by August 28, 2017. See Minn. R. Civ. P. 36.01 (providing time by which response is required to requests for admission).

8. On August 22, 2017, Defendant McLean did not appear for his Court–ordered deposition.

9. Defendant McLean neither answered nor objected to Plaintiff's Requests for Admission by the deadline of August 28, 2017. Thus, for purposes of this lawsuit Defendant McLean has admitted that he engaged in sexual contact with Plaintiff when she was a minor and under the age of 18 years old.

10. As a result of Defendant McLean's sexual abuse of Plaintiff, she has suffered and will continue to suffer damages.

11. Defendant McLean's conduct includes willful violations of court rules, contumacious conduct, and intentional delays.

ORDER

1. Plaintiff's Motion for Sanctions is **GRANTED** in part;

2. Defendant McLean is ordered to pay to Plaintiff the reasonable expenses, including attorneys' fees, in the amount of $3,811.37;

3. Plaintiff's Motion for Judgment by Default against Defendant Jason McLean is **GRANTED**. Judgment shall be entered in favor of Plaintiff and against Defendant in the amount of **$2,500,000.00**.

4. The attached memorandum is incorporated as if fully set forth herein.

There being no just reason for delay,

LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT:

2017.10.26
Frank J. Magill 15:21:06
-05'00'

The Honorable Frank J. Magill, Jr.
Judge of District Court

MEMORANDUM

STANDARD OF REVIEW

"If a party . . . fails to obey an order to provide or permit discovery . . . the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following . . . rendering a judgment by default against the disobedient party. . ." Minn. R. Civ. P. 37.02. "A court is vested with authority to render a judgment by default against a disobedient party who fails to comply or respond to discovery orders or requests." *State by Humphrey v. Ri-Mel, Inc.*, 417 N.W.2d 102, 108 (Minn. Ct. App. 1987).

"Although a judgment by default runs contrary to the primary objective of the law to dispose of claims on their merits, courts must be provided broad discretion to enforce . . . rules and prevent unnecessary and inexcusable delays." *State by Humphrey v. Ri-Mel, Inc.*, 417 N.W.2d 102, 108–09 (Minn. Ct. App. 1987) (citing *Housing and Redevelopment Authority v. Kotlar,* 352 N.W.2d 497, 499 (Minn.Ct.App.1984)). "A party who willfully and without justification or excuse fails to comply with discovery orders with an intent to delay trial and continues to refuse to cooperate with the court forfeits the right to a trial on the merits." *Id.* (citing *Breza v. Schmitz,* 311 Minn. 236, 237, 248 N.W.2d 921, 922 (1976).

Upon grant of default judgment "[i]f 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." Minn. R. Civ. P 55.01 (a).

DISCUSSION

As set out in the Court's Findings of Fact, above, Defendant has failed to follow the rules of discovery and the Court's orders repeatedly and without excuse. Defendant has failed to appear at numerous hearings and has filed nothing for months. The court was also provided with the

Affidavit of Gert De Herrera, a United States citizen living in Cabo San Lucas, testifying to the fact that he has first-hand information Defendant is currently in the process of purchasing property in Mexico worth over 1 million dollars. (Herrera Aff., Oct. 12, 2017).

Given Defendant's complete disregard for the legal process and his apparently willful attempts to circumvent the Court's authority, default judgment is the only appropriate sanction in this case. The matters set out in Plaintiff's Requests for Admissions, namely that Defendant McLean, as an adult, engaged in sexual contact with Plaintiff and four other plaintiffs when they were minors in violation of Minnesota law are established. The Court however takes no position at this time on the preclusive effect of that holding on other related matters pending against Mr. McLean.

With respect to the quantum of damages, the Court received the Affidavit of Susan Phipps-Yonas, Ph.D., who testified to the "significant psychological injuries" suffered by Doe 114 as a result of Defendant's sexual abuse. The Court will not recite the details of Dr. Phipss-Yanas's confidential affidavit herein, but based on that affidavit and remainder of the record before it, the Court finds that $2,500,000.00 is an appropriate award of damages and is consistent with jury verdicts in comparable cases.

CONCLUSION

For the reasons set forth above, Plaintiff is entitled to judgment against Defendant in the amount of $2,500,000. Plaintiff is also entitled to the reasonable expenses, including attorneys' fees, in the amount of $3,811.37.

FJM

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State of Minnesota
Hennepin County

District Court
Fourth Judicial District
Court File Number: **27-CV-16-1712**
Case Type: Personal Injury

FILE COPY

Notice of:

- [ ] **Filing of Order**
- [X] **Entry of Judgment**
- [ ] **Docketing of Judgment**

Doe 114 vs Jason McLean

You are hereby notified that the following occurred regarding the above-entitled matter:

- [ ] An Order was filed on October 26, 2017.
- [X] Judgment was entered on October 27, 2017.
- [ ] You are notified that judgment was docketed on at in the amount of $. Costs and interest will accrue on this amount from the date of entry until the judgment is satisfied in full.

Dated: October 27, 2017

Sarah Lindahl-Pfieffer
Court Administrator
Hennepin County District Court
300 South Sixth Street, C-3
Minneapolis MN 55487-0332
612-348-3169

cc: Jason McLean

A true and correct copy of this Notice has been served pursuant to Minnesota Rules of Civil Procedure, Rule 77.04.