

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

ESTATE OF GREGORY V. FAULL,

Plaintiff,

v.

Case No: 6:13-cv-1746-Orl-31KRS

JOHN MCAFEE,

Defendant.

ORDER

Following reversal and remand from the 11th Circuit Court of Appeals (Doc. 100), Plaintiff filed his Third Amended Complaint (Doc. 105) and served the same on Defendant by mail at his last known address (Doc. 107). On June 7, 2018, an order of default was entered (Doc. 111). On July 25, 2018, Plaintiff filed a motion for entry of default judgment (Doc. 113). By that motion, Plaintiff seeks entry of default judgment as to liability and a jury trial on damages. By Amended Report and Recommendation dated September 17, 2018 (Doc. 115), United States Magistrate Judge Spaulding recommended that the Court set the case for trial on the issues of liability and damages. Plaintiff filed objections to the Report and Recommendation (Doc. 118), which are now before the Court.

In its Opinion, the Circuit Court found that, "...the well-pleaded factual allegations in the Third Amended Complaint, accepted as true, plausibly state a wrongful death claim against McAfee under Florida law for the death of Faull." (Doc. 100 at page 4). The Court further noted that the standard for determining whether a sufficient basis exists for entry of default judgment is "akin to that necessary to survive a motion to dismiss for failure to state a claim." *Id.* at page 9. Thus, Plaintiff is entitled to entry of default judgment as to liability.

With respect to damages, Plaintiff requests a jury trial. However, as previously noted by this Court, federal law does not require a jury trial under these circumstances (Docs. 51, 55).

It is, therefore,

ORDERED that Plaintiff's objections to the Report and Recommendation are sustained, in part, and Plaintiff's motion for entry of default judgment (Doc. 113) is **GRANTED**, in part, as follows:

1. The Court will enter default judgment as to liability in favor of Plaintiff and against Defendant for the wrongful death of Gregory V. Faull; and
2. The Court will conduct a bench trial to determine damages on Thursday, January 10, 2019, at 9:30 a.m. in Courtroom 5A, Fifth Floor, George C. Young United States Courthouse and Federal Building, 401 W. Central Boulevard, Orlando, Florida.

Notice of this Order and this trial must be served by Plaintiff on Defendant by mail at his last known address.

DONE and ORDERED in Chambers, Orlando, Florida on November 14, 2018.




GREGORY A. PRESNELL
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record
Unrepresented Party