

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

FALLS LAKE NATIONAL  
INSURANCE COMPANY,

Plaintiff,

v.

Case No: 6:24-cv-385-JSS-LHP

INDICAR OF DAYTONA INC.,  
DAYTONA KIA, DAYTONA  
MITSUBISHI, INDICOM INC.,  
THEODORE FOSTER and JOYCE  
NIEVES, AS PR FOR THE ESTATE OF  
KATWAINA BROWN,

Defendants

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**ORDER**

This cause comes before the Court on Plaintiff's motions for Clerk's defaults against Defendants Theodore Foster, Daytona Mitsubishi, Daytona Kia, Indicar of Daytona, Inc., and Indicom, Inc. Doc. Nos. 35-39. Upon review, the motions are due to be denied without prejudice.

As an initial matter, none of the motions comply with Local Rule 3.01(g), despite the appearance of at least one Defendant in this case. *See* Doc. No. 25; Local Rule 3.01(g). The motions also fail to comply with Local Rule 3.01(a) because they

do not include memoranda of legal authority in support. *See* Doc. Nos. 35–39. Relatedly, the motions fail to adequately address, with citation to legal authority, that service of process on Defendants was proper. *See generally United States v. Donald*, No. 3:09-cv-147-J-32HTS, 2009 WL 1810357, at \*1 (M.D. Fla. June 24, 2009) (before a Clerk’s default can be entered against a defendant, the Court must determine that the defendant was properly served). Specifically, Plaintiff fails to address how service on Defendants Daytona Mitsubishi, Daytona Kia, Indicar of Daytona, Inc. and Indicom, Inc. by serving “Tom Pelchen” as “General Manager – Authorized” was sufficient to effect proper service under governing law. *See* Doc. Nos. 17–20; *see also* Doc. Nos. 36–39. And Plaintiff’s request for Clerk’s default against Theodore Foster is based on a document titled, “Non-Enforceable Return of Service,” with no explanation from Plaintiff. *See* Doc. Nos. 26, 35.

Accordingly, each of the motions (Doc. Nos. 35–39) is **DENIED without prejudice**. Plaintiff shall renew its requests for Clerk’s default within **fourteen (14) days** of the date of this Order, which request(s) must fully comply with the Local Rules, address the issues outlined in this Order, and include a memorandum of legal authority establishing that service of process on the Defendant(s) was proper under applicable law.

**DONE and ORDERED** in Orlando, Florida on May 24, 2024.

Handwritten signature of Leslie Hoffman Price in blue ink.

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LESLIE HOFFMAN PRICE  
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:

Counsel of Record  
Unrepresented Parties