

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

GORDON LEE BAUM and COUNCIL OF CONSERVATIVE CITIZENS,

Plaintiffs,

vs.

MAPLEWOOD CITY LIBRARY, et al.,

Defendants.

Cause No. 4:06-CV-453 - CDP

MOTION FOR ENTRY OF DEFAULT JUDGMENT AND PERMANENT INJUNCTION

COME NOW Plaintiffs, Gordon Lee Baum and Council of Conservative Citizens, by and through their attorney, Robert Herman of Schwartz, Herman & Davidson, and move this Court GRANT their Motion for Default Judgment, in accordance with F.R.Civ.P. 55(b)(2). In support thereof, Plaintiffs state as follows:

1. On March 13, 2006, Plaintiffs, Gordon Lee Baum and Council of Conservative Citizens (hereinafter "Plaintiffs"), filed a Complaint against Festus City Library alleging discrimination and violations against the First and Fourteenth Amendments of the United States Constitution. See, Complaint, attached hereto and incorporated by reference herein as Exhibit 1.

2. On March 17, 2006, a copy of said Complaint, Notice of Lawsuit and Request for Waiver of Service of Summons were served by Certified U.S. Mail, Return Receipt Requested, upon The Honorable Gene Doyle, City Hall, 711 West Main Street,

Festus, Missouri 63028. *See*, Notice of Lawsuit and Request for Waiver of Service of Summons and Return Receipt, attached hereto and incorporated by reference herein as **Exhibit 2**.

3. On or about March 27, 2006, The Honorable Gene Doyle executed and returned to Plaintiffs Defendant's Acknowledgement of Waiver of Service. *See*, Acknowledgement, attached hereto and incorporated by reference herein as **Exhibit 3**.

4. On May 16, 2007, sixty (60) days had elapsed since the Acknowledgement of Waiver of Service had been executed on behalf of Festus City Library, and Defendant has failed to plead or otherwise defend this action, and Plaintiffs are entitled to judgment by default against Defendant Festus City Library.

5. That said failure of Defendant to plead or otherwise answer is set forth in the affidavit immediately following this motion.

6. Pursuant to the provisions of Rule 55(b)(2), Federal Rules of Civil Procedure, this Court is empowered to enter a default judgment against the Defendant for relief sought by Plaintiffs in their Complaint, and written notice of this action has been given to Defendant.

**WHEREFORE**, Plaintiffs, Gordon Lee Baum and Council of Conservative Citizens, pray this Court Grant their Motion for Default, Order for Declaratory Judgment and Permanent Injunction, as suggested in the attached proposed Declaratory Judgment and Permanent Injunction, for attorneys' costs and fees, and for any such other and further relief this Court deems just and proper.

Respectfully submitted,

**SCHWARTZ, HERMAN & DAVIDSON**

By: /s/ Robert Herman

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*Attorney for Plaintiffs, Gordon Lee Baum  
and Council of Conservative Citizens*

**AFFIDAVIT OF FAILURE TO PLEAD OR OTHERWISE ANSWER**

The undersigned, being duly sworn, upon oath deposes and says:

1. That I am the attorney of record for Plaintiffs in the above-captioned matter and have personal knowledge of the facts set forth in this affidavit;

2. That on March 13, 2006, Plaintiffs, Gordon Lee Baum and Council of Conservative Citizens (hereinafter "Plaintiffs"), filed a Complaint against Festus City Library alleging discrimination and violations against the First and Fourteenth Amendments of the United States Constitution.

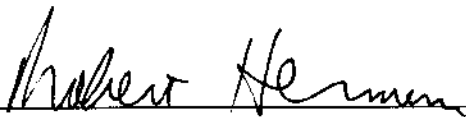
3. That on March 17, 2006, a copy of said Complaint, Notice of Lawsuit and Request for Waiver of Service of Summons were served by Certified U.S. Mail, Return Receipt Requested, upon The Honorable Gene Doyle, City Hall, 711 West Main Street, Festus, Missouri 63028.

4. That on or about March 27, 2006, The Honorable Gene Doyle executed and returned to Plaintiffs Defendant's Acknowledgement of Waiver of Service.

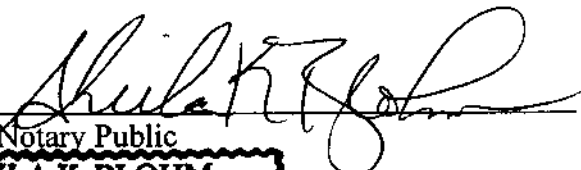
5. That on May 16, 2007, sixty (60) days had elapsed since the Acknowledgement of Waiver of Service had been executed on behalf of Festus City Library, and Defendant has failed to plead or otherwise defend this action, and Plaintiffs are entitled to judgment by default against Defendant Festus City Library.

6. That this affidavit is executed by the affiant herein in accordance with Rule 55(a) of the Federal Rules of Civil Procedure for the purpose of enabling Plaintiffs to obtain an Entry of Default against Defendant Festus City Library for failure to plead or otherwise answer as to the Plaintiffs' Complaint.

Further than this, affiant sayeth naught.

  
Robert Herman

Subscribed and Sworn to before me, a Notary Public, this 8<sup>th</sup> day of June, 2006.

  
Notary Public

My Commission Expires:



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on June 8<sup>th</sup>, 2006, a true and correct copy of the foregoing document was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon all counsel of record.

By: /s/ Robert Herman