

FILED 1/22/19

AT 2:10 O'Clock P. M

CLERK OF DISTRICT COURT

[Signature]
Deputy

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI**

DANIEL RENAUD,)
Plaintiff,)
vs.)
MATTHEW CHARLES CROSS, and CARLI)
CAMPBELL,)
Defendants.)

Case No. **CV28-18-4752**

**MEMORANDUM DECISION AND
ORDER DENYING PLAINTIFF'S
MOTION FOR DEFAULT
JUDGMENT AND REQUEST TO
VACATE DAMAGES TRIAL**

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.

On June 12, 2018, plaintiffs filed this lawsuit, alleging on December 24, 2017, plaintiff, David Renaud (Renaud) was severely beaten by defendant Matthew Cross (Cross), and that Cross did so at the request of defendant Carli Campbell (Campbell). Complaint, 2. Renaud alleges he had been drinking with Campbell at her home, Campbell asked Renaud to leave but instead he fell asleep on her sofa. *Id.* Campbell told Renaud that if he stayed he would "get his ass kicked," then Campbell called Cross who came over to Campbell's house and began beating him as he slept, fulfilling Campbell's premonition. *Id.* Renaud alleges he was severely injured, that his repairs for the shellacking required steel plates and his jaw being wired shut. *Id.* Apparently, Cross became the sole arbiter of who was naughty and who was nice that Christmas eve.

Campbell hired an attorney who filed an appearance on July 19, 2018. Service was accomplished on Cross on June 25, 2018 (Affidavit of Service filed June 26, 2018),

however, at no time has Cross answered or even filed an appearance. On July 27, 2018, Renaud moved for default on Cross via a Motion and Declaration for Entry of Default Against Defendant Matthew Charles Cross. That pleading contains a declaration of Renaud which provides more detail about his damages than his Complaint. On August 1, 2018, this Court entered default against Cross. On October 3, 2018, a scheduling conference was held. Counsel for Renaud and Campbell appeared, Cross did not appear. Counsel for Campbell informed the Court that Campbell had filed bankruptcy. The Court informed the attorneys that although the Court had signed the Order for Default against Cross, there needed to be a trial on the issue of damages, and the Court was not willing to sign the Default Judgment presented by counsel for Renaud. Counsel for Renaud wished to proceed to trial against Cross only (due to the stay involved in Campbell's bankruptcy), and this Court scheduled a court trial against Cross for January 14, 2019, and a status conference on February 26, 2019, regarding claims against Campbell. On January 10, 2019, counsel for Renaud filed a Motion for Default Judgment and Request to Vacate Damages Trial. In that motion, Renaud claims that due to Renaud's verified Complaint, Renaud is entitled to damages in the amount of \$872,978.97, and that no trial is needed to warrant those damages. Mot. for Default J. and Request to Vacate Damages Trial, 1--8. Based upon that motion, and with the agreement of Renaud's attorney, this Court vacated the January 14, 2019, trial.

The vast majority of the \$872,978.97 requested damages are for unliquidated damages, \$500,000.00 for pain and suffering, past lost wages claimed of \$11,787.47, and future lost earnings in the amount of \$359,415.50. *Id.* Unliquidated damages are "damages that have been established by a verdict or award but cannot be determined by a fixed formula, so they are left to the discretion of the judge or jury." *Unliquidated*

damages, Black's Law Dictionary, (7th ed. 1999). Given that definition, only attorney fees and costs in the claimed amount of \$1,776.00 are arguably liquidated, but even those damages involve the discretion of the Court. In the default context, "sum certain" is similar to liquidated damages. I.R.C.P. 55(b)(1). "If a claim is for a sum certain or a sum that can be made certain by computation, the court, on the claimant's request, with an affidavit showing the amount due, must order judgment for that amount and costs against the party who has been defaulted for not appearing and who is neither a minor nor an incompetent person and has been personally served, other than by publication or personal service outside of this state." *Id.*

II. ANALYSIS.

A. Introduction.

Preliminarily, this Court determines that Renaud's Motion for Default Judgment and Request to Vacate Damages Trial can be decided without a hearing. Renaud did not request a hearing within that motion, he has not filed a notice of hearing within fourteen days of filing that motion. I.R.C.P. 7(a)(3)(A), (E).

This Court finds a hearing or a trial is necessary on all items of damage requested. An excellent discussion of the issues presented to this Court at this default juncture is found in a recent article from *The Advocate* titled "The Default Judgment Tool Kit." Stephen Adams, The Default Judgment Toolkit, *Advocate*, Feb. 2017 at 42. In that article, the author notes that even in "sum certain" cases involving debt collection, authenticated documentary evidence of the debt or contract is necessary. *Id.* at 45. As mentioned above, Renaud has filed no affidavit. Thus, none of the categories of damages sought would be supported by documents attached to such an affidavit (copies of past and present pay checks, medical bills and medical reports).

With regard to evidence for “Other Cases,” if there are general damages involved, does this mean that a hearing will automatically happen? Not necessarily. If a party wants to avoid a hearing, they may explain their pain and suffering, loss of consortium, etc., in an affidavit or declaration. While this may not be as effective as having a client emote on the stand, it does save time and expenses, and may convince the Court that a damages hearing is unnecessary. As with all evidentiary issues, the affidavit should be prepared by the proper person (usually the client).

Id. at 46. Again, Renaud has not submitted an affidavit. The Complaint gives no explanation as to the extent of pain and suffering. The Complaint attaches no medical bill summary, let alone any attached copies of medical bills. Pain and suffering would almost certainly involve Renaud “emote on the stand.” Given the facts as alleged by Renaud, there may be concerns as to his ability to recall and recollect the events in question, concerns as to why Renaud has left his job and the area, as well as other credibility concerns for this Court which can only be addressed by Renaud taking the witness stand.

B. Pain and suffering.

“Under Idaho law the plaintiff is entitled to recover from a negligent defendant compensation for mental and physical pain and suffering.” *Swanson v. U.S. By & Through Veterans Admin.*, 557 F. Supp. 1041, 1046 (D. Idaho 1983). “This does not require that any witness should have expressed an opinion as to the amount of damages that would compensate for such injuries.” *Id.* “The law requires only that when making an award for pain and suffering, the finder of fact exercised calm and reasonable judgment.” *Id.* The amount of necessity rests in the sound discretion of the finder of fact. *Id.* at 1046–47 (citing *Bentzinger v. McMurtrey*, 100 Idaho 273, 596 P.2d 785 (1979)). “In personal injury actions there is no measuring stick by which to determine the amount of damages to be awarded for pain and suffering other than the intelligence of a fair and impartial trier of fact, governed by a sense of justice; each case

must of necessity depend upon its own peculiar facts.” *Id.* There is no standard fixed by Idaho law for measuring the value of human health or happiness. *Id.*

Here, Renaud in his Complaint is requesting a total of \$300,000.00 for pain and suffering. Pl. Compl., 3. Renaud requests the same \$300,000.00 in his Motion and Declaration for Entry of Default Against Defendant Matthew Charles Cross. Mot. and Decl. for Entry of Default J. Against Def. Matthew Charles Cross, 7, ¶ 28. However, in his Motion for Default Judgment and Request to Vacate Damages Trial, Renaud now requests \$500,000.00 for pain and suffering. Mot. for Default J. and Request to Vacate Damages Trial, 5. That pleading is not verified by Renaud, thus, there is no evidence at all to support that amount. The only justification for that amount is the statement that the state of Idaho’s current maximum noneconomic damages amount is \$357,210.62. *Id.* at 3--5. Renaud is also requesting an additional amount of \$142,789.38 (the difference between the total amount and the noneconomic cap), in excess of the cap. Idaho Code Section 6-1603(4) states, “[t]he limitation of awards of noneconomic damages shall not apply to: (a) Causes of action arising out of willful or reckless misconduct.” I.C. § 6-1603(4). *Id.* at 3. Renaud asserts that Cross’s actions rose to the standard of willful or reckless misconduct because he willfully and savagely struck Renaud’s face and body, causing serious and traumatic injuries. Renaud also cites this Court to Idaho Civil Jury Instruction 9.01(A), which identifies five elements of damage for a jury to consider when awarding damages for pain and suffering. *Id.* at 4. Renaud follows this up with multiple detailed paragraphs of the physical and mental trauma he suffered. *Id.* at 4--5. Based on the physical and mental trauma he has experienced thus far, and will continue to experience, Renaud’s attorney believes \$500,000.00 is an appropriate remedy for his pain and suffering. *Id.* at 5. However,

something more than abject belief of Renaud's attorney is required to merit a judgment as to a dollar amount of Renaud's pain and suffering at the hands of Cross.

C. Future lost earnings.

"In Idaho, 'damages for lost earnings in the future must be shown with reasonable certainty and compensatory awards based on speculation and conjecture should not be allowed.'" *Bailey v. Sanford*, 139 Idaho 744, 751, 86 P.3d 458, 465 (2004) (quoting *Warren v. Furniss*, 124 Idaho 554, 559–60, 861 P.2d 1219, 1224–25 (Ct.App.1993)). "Speculative evidence offered to satisfy the 'reasonable certainty' element of future lost earnings is inadmissible." *Id.* (citing *Rindlisbaker v. Wilson*, 95 Idaho 752, 761, 519 P.2d 421, 430 (1974)). "To show future lost earnings with reasonable certainty, the claimant must prove the extent to which her future earning power was impaired." *Id.* (citing *Long v. Hendricks*, 109 Idaho 73, 705 P.2d 78 (Ct.App.1985)).

Here, Renaud is requesting a total of \$349,415.50 for future lost earnings. According to Renaud's declaration, he felt compelled to leave his prior place of employment due to fear of being confronted by Cross, as Cross knew where he both lived and worked. Mot. and Decl. for Entry of Default J. Against Def. Matthew Charles Cross, 3, ¶ 13. In his unverified Motion for Default Judgment and Request to Vacate Damages Trial, counsel for Renaud adds the claim that Renaud was compelled to "find a new living arrangement and job where Plaintiff would not be found by defendant." Mot. for Default J. and Request to Vacate Damages Trial, 4. There is no evidence to support that claim of needing to find a new living arrangement. At his prior job, before the incident with Cross, Renaud made approximately \$106,353.12 per year. Mot. and Decl. for Entry of Default J. Against Def. Matthew Charles Cross, 4–6, ¶¶ 18–23, 26–28; Exhibit A. This Court notes that Exhibit A is nearly unreadable. At his new job, if he

remains there, he will make approximately \$34,470.02 per year (based off of one paycheck from a two-week period). *Id.* at 5–6, ¶¶ 24–28; Exhibit B. The difference between those two annual salaries is \$71,883.10. *Id.* Renaud provides that his recovery time is five years. *Id.* at 6, ¶ 26. Renaud multiplies the salary difference and the five-year recovery time to get future lost earnings in the amount of \$359,415.50. *Id.* at 5–6, ¶¶ 24–28. However, neither the declaration of Renaud (filed on July 27, 2018) or the request to vacate the trial on damages (filed on January 10, 2019) provide or explain how he arrived at a recovery time of five years. There is no basis at this point for that speculative claim, let alone any evidence. Renaud even states, “[a]t this time, it is uncertain as to whether or when Plaintiff would be able to return to a position that paid what Plaintiff earned before Defendant’s attack.” *Id.* at 7. Regarding future lost earnings, additional information is required before a proper determination can be made.

D. Costs and attorney fees.

In his Complaint, Renaud requested attorney fees in the amount of \$1,500.00 in the event that judgment is entered by default and in such greater sum as the Court may award if this action is contested. Pl. Compl., 4. In his Motion for Default Judgment and Request to Vacate Damages Trial, Renaud only requests the \$1,500.00 he requested in his Complaint. At this time, this Court could award \$1,500.00 requested, but no more, as it was listed in the prayer for relief. I.R.C.P. 54(e)(4)(B). Even that determination would involve the Court’s discretion as to reasonableness. I.R.C.P. 54(e)(7). At the hearing or trial on damages, Renaud is not limited to that amount pled in his Complaint. I.R.C.P. 54(e)(5), (7).

III. CONCLUSION AND ORDER.

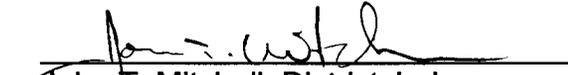
For the reasons stated above,

IT IS HEREBY ORDERED that plaintiff Renaud's Motion for Default Judgment and Request to Vacate Damages Trial is DENIED.

IT IS FURTHER ORDERED that in order to obtain a Judgment against defendant Cross, plaintiff Renaud must schedule and conduct a court trial on the issue of all damages.

IT IS FURTHER ORDERED that the February 26, 2019, status conference pertaining to defendant Campbell remains set.

Entered this 22nd day of January, 2019.


John T. Mitchell, District Judge

Certificate of Service

I certify that on the 22nd day of January, 2019, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

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Jeanne Clausen, Deputy Clerk