**IN THE CIRCUIT COURT OF THE 20TH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CIVIL DIVISION**

,

Plaintiff,

vs. Case Number:

,

Defendant.

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**NOTICE & ORDER SETTING EVIDENTIARY FINAL**

**HEARING/TRIAL PURSUANT TO Fla. Rule. Civ. Pro. 1.440**

**THIS CAUSE** having come before the Court by motion seeking entry of a Final Judgment, it is hereby **ORDERED and ADJUDGED:**

1. An evidentiary hearing/trial is necessary prior to entry of a final judgment to the extent that not all damages are liquidated. *Sarasota Estate & Jewelry Buyers, Inc. v. Joseph GAD, Inc.*, 25 So.3d 619, 621 (Fla. 2d DCA 2009) ("A party who defaults has a due process right to notice and an opportunity to be heard regarding the presentation of evidence for a determination of the amount of unliquidated damages."); *see also*, *Ciprian-Escapa v. City of Orlando*, 172 So.3d 485, 488 (Fla. 5th DCA 2015)("Strict compliance with rule governing the setting of actions ready for trial is required... It is fundamental error to set unliquidated damages without the notice, proof, and hearing required by subsection of rule governing the setting of actions ready for trial requiring service on parties who are in default."). Any such hearing is technically a trial which requires at least thirty days notice pursuant to Fla. R. Civ. Pro. 1.440(c) and must be set by order of the Court. *Roggemann v. Boston Safe Deposit and Trust Company*, 670 So.2d 1073 (Fla. 4th DCA 1996) (Notwithstanding a default having been entered, an evidentiary hearing/trial is required for unliquidated damages. "Rule 1.440(c) [as applied to a motion seeking final default judgment] mandates that a trial be set by an order of the court not less than 30 days..."). A judgment entered after a hearing not set in accordance with Fla. R. Civ. Pro. 1.440(c) can be attacked and deemed void at any time. *Torres v. One Stop Maint. & Mgt., Inc*., 178 So. 3d 86 (Fla. 4th DCA 2015) (“Judgment was void for lack of due process since defendants only received a few days’ notice for damages trial.”); *see also*, *Vercosa v. Fields,* 174 So.3d 550 (Fla. 4th DCA 2015)(“[I]t is well settled that a defaulting party is entitled to notice and an opportunity to be heard when the damages are unliquidated. A judgment entered without such notice and opportunity to be heard is void.”). The Court cannot enter a Final Default Judgment premised upon, in whole or in part, affidavits without a requisite evidentiary hearing/trial. Attorneys’ fees that a party seeks to recoup as part of a contract is included within that aspect. *See*, *generally*, Holiday Gulf Builders, Inc. v. Tahitian Gardens Condo., Inc., 443 So.3d 143, 145 (Fla. 5th DCA 1983)(a “request for ‘reasonable’ attorney’s fees is a request for unliquidated damages” which necessitates a trial for the determination of the amount thereof).

2. **Notice & ORDER Setting Final Evidentiary Hearing/Trial.** A final evidentiary hearing/trial on the above referenced motion is hereby scheduled by virtue of this Order. The Court shall conduct an ***evidentiary hearing/trial*** on Plaintiff's motion seeking entry of a FINAL JUDGMENT on **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ at \_\_\_\_\_\_\_\_\_\_\_ a.m. / p.m.** for \_\_\_\_\_\_\_\_\_\_\_\_ (\_\_\_\_) minutes at the **Lee County Justice Center, Hearing Room 4-P, 1700 Monroe Street, Fort Myers, Florida, 33901. All counsel /parties of record may attend this hearing via ZOOM.**

Join Zoom Meeting <https://zoom.us/j/95818196610?pwd=dVpjdVg5Z3p0WTdNWHNNM1pEeWpsUT09> Meeting ID: 958 1819 6610, Passcode: 965021).

3. **Witness/Exhibit Lists.** All parties shall file and exchange/serve a list of witnesses, exhibits, or any other documentary evidence that will be used at said hearing at least ten days prior to the hearing. Untimely submissions may not be considered if an appropriate and timely objection is raised. Please note that this hearing is in essence a trial, not a hearing on a motion for summary judgment. Accordingly, affidavits are hearsay (out of Court statements offered for proof of truth of the matters asserted therein) and are therefore objectionable, however, such objections are subject to waiver. Continuances will not be granted based upon lack of preparation, failure to timely file a witness/exhibit list, unavailability of witnesses, et cetera. Also note, that the Second District Court of Appeal specifically has held that mere recitation of a figure in a Complaint is not necessarily tantamount to an automatic liquidation of the amount(s) claimed notwithstanding an entry of default. *Paramo v. Floyd*, 154 So.3d 477 (Fla. 2d DCA 2015).

**DONE AND ORDERED** in Fort Myers, Lee County, Florida.

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Circuit Court Judge, 20th Jud. Cir.

**“If you are a person with a disability who needs any accommodation in order to participate in the proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Brooke Dean, Operations Division Director, whose office is located at Lee County Justice Center, 1700 Monroe Street, Fort Myers, FL 33901, and whose telephone number is (239) 533-1771, at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.”**