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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

SCANNED

Case No. CV04-10585-CAS (MANx) Date November 4, 2005  
Title ROBERT G. KAVANAUGH, ET AL. v. WILLIAM JAMES FAHEY, ET AL.

Present: The Honorable CHRISTINA A. SNYDER

CATHERINE JEANG

Deputy Clerk

Court Reporter / Recorder

ENTERED  
CLERK, U.S. DISTRICT COURT  
NOV - 7 2005  
CENTRAL DISTRICT OF CALIFORNIA  
BY \_\_\_\_\_ DEPUTY

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

None Present

None Present

**Proceedings:** MOTION FOR DEFAULT JUDGMENT AS TO DEFENDANTS  
BIOTEC FOODS OF FLORIDA, INC. DBA BIOTEC FOOD  
CORPORATION AND BIOVET INTERNATIONAL, INC.  
(filed October 11, 2005)

MOTION TO SUBSTITUTE PLAINTIFFS AGRIGENIC FOOD  
CORPORATION AND ARISE DIRECT MARKETING INC.,  
PURSUANT TO FRCP 25(C)  
(filed October 11, 2005)

DEFENDANT'S REQUEST AND APPLICATION FOR A  
CONTINUANCE OF MOTION FOR DEFAULT JUDGMENT AS TO  
DEFENDANTS BIOTEC FOODS OF FLORIDA, INC. DBA BIOTEC  
FOOD CORPORATION AND BIOVET INTERNATIONAL, INC.  
(filed October 27, 2005)

DEFENDANT'S OBJECTION TO MOTION TO SUBSTITUTE  
PLAINTIFFS AGRIGENIC FOOD CORPORATION AND ARISE  
DIRECT MARKETING INC. PURSUANT TO FRCP 25(C)  
(filed October 27, 2005)

DOCKETED ON CM  
NOV - 7 2005  
BY h 001

THIS CONSTITUTES NOTICE OF ENTRY  
AS REQUIRED BY FRCP, RULE 77(d).

On October 11, 2005, plaintiff Robert G. Kavanaugh ("Kavanaugh"), who is not an attorney but is instead a principal of Agrigenic Food Corporation and Arise Direct Marketing, Inc. (collectively, the "Corporate Plaintiffs"), filed a motion for default judgment on behalf of the Corporate Plaintiffs while simultaneously moving to substitute himself in their place under Fed. R. Civ. P. 25(c).<sup>1</sup> On October 27,

<sup>1</sup> Fed. R. Civ. P. 25 (c) provides:

In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the

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UNITED STATES DISTRICT COURT  
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2005, defendant William James Fahey ("Fahey") filed a request for a continuance as to the motion for default judgment "so that we may finalize the securing of an attorney to represent Biotec Foods Florida and Biovet International." Defendant's Request for a Continuance at 1. The same day, Fahey filed an objection to Kavanaugh's proposed substitution. All of the parties' motions are presently before the Court.

Local Civil Rule 83-2.10.1 states:

A corporation including a limited liability corporation, a partnership including a limited liability partnership, an unincorporated association, or a trust may not appear in any action or proceeding *pro se*.

Kavanaugh cannot bring a motion for default on behalf of the Corporate Plaintiffs because he is not an attorney, but rather is a principal of the Corporate Plaintiffs. However, given that Kavanaugh's motion for substitution was filed together with his motion for default judgment, the Court finds it appropriate to GRANT the motion to be substituted in place of the Corporate Plaintiffs based on their having assigned their trademarks to Kavanaugh.<sup>2</sup> See August 24, 2005 Notice of Interested Parties of Assignment and Transfer of Interest, Ex. A; Fed. R. Civ. P. 25(c); . Accordingly, Fahey's objection to the motion for substitution is overruled.

The Court further DENIES Fahey's motion for an enlargement of time to retain counsel on behalf of Biotec Foods of Florida and Biovet International, Inc. The Court notes that Fahey has had since August 26, 2005, to obtain counsel, that his application for continuance is untimely, and that no good cause has been shown to justify his failure to obtain counsel.<sup>3</sup>

Having considered Kavanaugh's motion for default judgment, the Court enters a judgment of infringement in favor of Kavanaugh and against Biotec Foods of Florida, Inc. d/b/a Biotec Food

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interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in subdivision (a) of this rule.

<sup>2</sup> Kavanaugh seeks substitution "so that [he] may . . . continue to protect his rights without violating Local Rule 83-2.10.1." Motion to Substitute Plaintiffs at 7.

<sup>3</sup> In its Order dated August 26, 2005, the Court granted Biotec Foods of Florida, Inc. and Biovet International, Inc. 30 days to retain corporate counsel, or to face monetary or other sanctions. See August 26, 2005 Order. The Court notes that Fahey failed to request more time to retain counsel within the 30 day period provided for the corporations to obtain counsel, but rather has waited to make his request until after the present motion for default was filed.

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Corporation and Biovet International, Inc. However, as to the question of the appropriate damages for each infringement and whether or not each infringement is willful, the Court reserves judgment on these issues until the end of the case. The Court likewise reserves judgment as to Kavanaugh's entitlement to injunctive or declaratory relief until the end of the case.

IT IS SO ORDERED.

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 Initials of Preparer \_\_\_\_\_ *arg.* \_\_\_\_\_