

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:

Daniel J. Galarowicz,

Debtor(s).

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Sterling, Inc. d/b/a Osterman Jewelers

Plaintiff,

Adv. 04-4223

v.

Daniel J. Galarowicz,

Bky. 04-42843

Defendant(s).

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**NOTICE OF HEARING AND MOTION**

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TO: Debtor and other entities specified in Local Rule 9013-3(a):

1. Plaintiff, Sterling Inc., d/b/a Osterman Jewelers, moves the Court for the relief requested below and gives notice of hearing.
2. The Court will hold a hearing on this motion on October 27, 2004, at 10:30 AM o'clock, in Courtroom 7 West, United States Courthouse, at 300 South Fourth Street, Minneapolis, Minnesota.
3. Any response to this motion must be filed and delivered not later than October 22, 2004, which is three days before the time set for the hearing(excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than October 18, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays, and holidays).

UNLESS A RESPONSE OPPOSING THIS MOTION IS TIMELY FILED, THE

COURT MAY GRANT THE MOTION WITHOUT A HEARING.

4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Fed. R. Bankr. RP. 5005 and Local rule 1070-1. This proceeding is a core proceeding. The petition commencing this case was filed on May 19, 2004. This adversary proceeding was filed on August 11, 2004. The case is now pending in this court.
5. This motion arises under 11 U.S.C. §523 and Fed. R. Bankr. P. 7055. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rule 7055-1. Movant requests that default judgment be entered against Defendant based on the allegations contained in the Complaint to Except Debt from Discharge under 11 U.S.C. §523. The allegations contained in the Complaint are incorporated herein by reference and made a part thereof.
6. The Complaint to Except Debt from Discharge under 11 U.S.C. §523 was filed with the Court on August 11 2004, and a Summons was issued by the Court.
7. On August 11, 2004, a copy of the Summons and Complaint was served upon Defendant and his attorney by certified mail and US mail. The Summons and Complaint has not been returned by postal service.
8. Defendant has failed to plead or otherwise defend or appear within the time allowed by Fed. R. Bankr. P. 7012 and as prescribed in the Summons. Accordingly, Plaintiff is entitled to judgment by default.
9. This motion is based upon the accompanying Affidavits.
10. This notice of motion and motion shall serve as the application for default judgment required by Local Rule 7055-1.

**WHEREFORE**, Plaintiff moves the Court for an Order entering judgment by default against Defendant for the relief sought in the Complaint.

Dated: October 11, 2004

**STEWART, ZLIMEN & JUNGERS, LTD.**

/e/ Ellen Cha

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Ellen Cha, #315217  
Attorneys for Plaintiff  
430 Oak Grove Street #200  
Minneapolis, MN 55403  
612-870-4100

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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Sterling, Inc. d/b/a Osterman Jewelers

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**AFFIDAVIT OF DEFAULT**

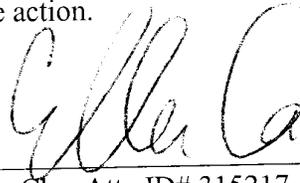
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STATE OF MINNESOTA    )  
                                  )SS.  
COUNTY OF HENNEPIN    )

Ellen Cha, being first duly sworn on oath, states as follows:

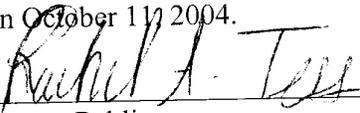
1. I am one of the attorneys representing Plaintiff in the above-entitled action.
2. The Complaint was filed with the Court on August 11, 2004 and a Summons was issued.
3. A copy of the Summons and Complaint was served upon Defendant and his attorney on August 11, 2004 by Certified mail and US mail.
4. That the time allowed by law and specified in the Summons for Defendant to respond to the Complaint has lapsed and that no response or other pleading has been received by or served upon Plaintiff or it's attorneys.

5. That Defendant has otherwise failed to defend the action.

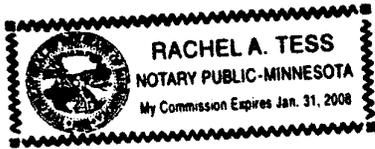


Ellen Cha, Atty ID# 315217

Subscribed and sworn to before me,  
on October 11, 2004.



Notary Public



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:

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Sterling, Inc. d/b/a Osterman Jewelers

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Daniel J. Galarowicz,

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Defendant(s).

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**AFFIDAVIT OF IDENTIFICATION AND  
NON-MILITARY SERVICE**

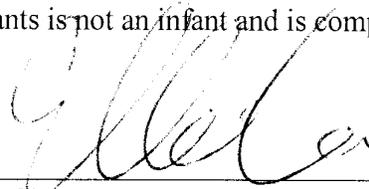
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STATE OF MINNESOTA    )  
                                  )SS.  
COUNTY OF HENNEPIN    )

Ellen Cha, being first duly sworn on oath, states as follows:

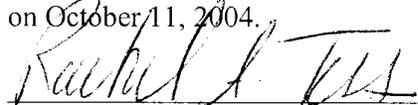
1. I am one of the attorneys for the Plaintiff in the above-entitled action.
2. The last known residence of Defendant, Daniel J. Galarowicz is 807-11th Avenue South, Apt. 5, Hopkins, Minnesota.
3. That your affiant verily believes that Defendant is not a member of any branch of the United States military and is not entitled to any relief under the Soldiers' and Sailors' Civil Relief Act of 1940, as amended.

4. That upon information and belief, Defendants is not an infant and is competent.

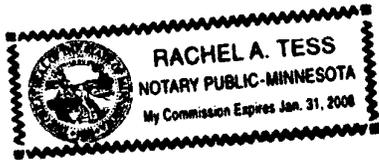


Ellen Cha, Atty ID#315217

Subscribed and sworn to before me,  
on October 11, 2004.



Notary Public





the purchase amount was paid in full.

5. Defendant granted Plaintiff a purchase money security interest in the Collateral.

6. At the June 17, 2004, 341 Meeting of Creditors, Defendant testified under oath that notwithstanding Plaintiff's security interest, that he sold the Collateral to a third party shortly after their purchase.

7. Defendant also testified that he received approximately \$2,500.00 for each of the three (3) watches.

8. Defendant has not paid the sale proceeds to the Plaintiff.

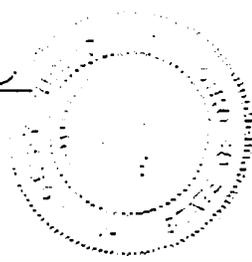
9. Defendants intentionally sold the Collateral and deliberately failed to remit the sale proceeds to Plaintiff.

10. Defendant sold the Collateral with the intent to cause financial harm to Plaintiff.

11. At the time of the sale of the Collateral, the value of the Collateral was \$ 19,748.00

Dated: 10-1-04

*Garry Anderson*



Subscribed and Sworn to before me this 5 day of October, 2004.

Notary Public

MELANIE S. CARPICO  
NOTARY PUBLIC, MEDINA COUNTY, OH  
MY COMMISSION EXPIRES SEPTEMBER 2005

*Pearson* (M.P.)

UNITED STATES BANKRUPTCY COURT  
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**MEMORANDUM OF FACT AND LAW**

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Sterling Inc., d/b/a Osterman Jewelers (“Plaintiff”) submits this Memorandum of Fact and Law in support of its motion for default judgment.

**FACTS**

On or about October 23, 2001 and November 14, 2001 Defendant, Daniel J. Galarowicz, purchased three (3) Rolex watches. Defendant executed Credit Agreements and agreed to make payments until the purchase amounts were paid in full. Defendant granted to Plaintiff a purchase money security interest in the watches. No payments under the Credit Agreements have been made to Plaintiff.

On May 19, 2004, Defendant filed for Chapter 7 bankruptcy relief. Defendant did not propose to reaffirm the debt owed to Plaintiff nor propose to surrender the collateral. At the June 17, 2004, 341 Meeting of Creditors, Defendant testified under oath that notwithstanding

Plaintiff's security interest, he sold the watches to a third party shortly after their purchase. Defendant also testified that he received approximately \$2,500.00 for each of the three watches. Defendant has not paid the sale proceeds to Plaintiff.

Plaintiff filed a Complaint to commence an adversary proceeding to have the debt owed by Defendant to Plaintiff excepted from Defendant's discharge from bankruptcy pursuant to 11 U.S.C 523(a)(6). The Complaint was filed with the Court on August 11, 2004 and the Court issued a Summons. A copy of the Summons and Complaint was served upon Defendants and their attorney on August 11, 2004. Defendants have failed to respond or defend this action within the time allowed by law. Plaintiff now moves the Court on a motion for default judgment against Defendants.

### **ARGUMENT**

It is Plaintiff's position that the debt owed by Defendants to Plaintiff should be deemed non-dischargeable pursuant to 11 U.S.C. §523(a)(6) for willful and malicious injury to the property of Plaintiff. Defendant executed Credit Agreements for the purchase of three (3) Rolex watches totaling more than \$17,434.39. Shortly after the purchase of the watches, Defendant sold the watches to a third party, despite having granted to Plaintiff a security interest in the watches and having agreed to repay Plaintiff the purchase amounts. Not one payment was made under the Credit Agreements.

Defendant executed Credit Agreements specifically granting Plaintiff a security interest in the three watches. Despite Plaintiff's security interest in the watches, Defendant intentionally and deliberately sold the watches to a third party and failed to remit the sale proceeds to Plaintiff. Defendant has failed to reaffirm the debt. It is Plaintiff's position that Defendant had no intention of repaying the debt owed to Plaintiff under the Credit Agreements. As a result of

Defendant's actions, Plaintiff has been damaged in the amount of \$19,748.00.

Defendant has failed to answer or otherwise defend against the allegations in the Complaint. Where a party fails to plead or otherwise defend an action within the time allowed by law, a default judgment may be entered against the defaulting party. See Fed. R. Civ. P. 55. Federal Rules of Civil Procedure, Rule 55 is applicable to bankruptcy proceedings pursuant to Federal Rules of Bankruptcy Procedure, Rule 7055.

Federal Rules of Civil Procedure, Rule 55 states in relevant part:

(a)Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by Affidavit or otherwise...

(b)Judgment. Judgment by default may be entered as follows:

(1)By the Court. ...[T]he party entitled to a judgment by default shall apply to the court therefor...

The Summons issued by the Court provided Defendant 30 days within which to serve an Answer to the Summons and Complaint. See Fed. R. Bankr. P. 7012. The Summons and Complaint was served upon Defendant and his attorney on August 11, 2004. Defendant has failed to plead or otherwise defend this action. Plaintiff requests that the Court enter judgment by default against Defendant for the relief sought in the Complaint.

## CONCLUSION

Based upon the application for default judgment, the Affidavits submitted and the foregoing legal arguments and authorities, Plaintiff requests that default judgment be entered against Defendant.

Respectfully submitted,

Dated: October 11, 2004

**STEWART, ZLIMEN & JUNGERS, LTD.**

/e/ Ellen Cha

Ellen Cha, #315217

Attorneys for Plaintiff

430 Oak Grove Street #200

Minneapolis, MN 55403

612-870-4100

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**FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND ORDER FOR JUDGMENT**

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The above-entitled matter came on for hearing on October 27, 2004, at 10:30 AM o'clock, before the Honorable Nancy C. Dreher, upon Plaintiff's Motion for Default Judgment. Appearances were noted on the record. Based on the arguments of counsel, Plaintiff's Application for default judgment and Affidavits, all the files, records and proceedings herein, the Court makes the following:

**FINDINGS OF FACT**

1. The Summons and Complaint in the present action was filed with the Court and served upon Defendant and his attorney on August 11, 2004 by Certified mail and US mail.
2. On October 23, 2001 and on November 24, 2001, Defendant executed Credit Agreements for the purchase of three (3) Rolex watches.

3. Defendant granted to Plaintiff a purchase money security interest in the three (3) Rolex watches.
4. Defendant agreed to make payments to Plaintiff until the purchase price was paid in full.
5. Notwithstanding Plaintiff's security interest, Defendant sold the three (3) Rolex watches for approximately \$2,500.00 each.
6. Defendant failed to remit the sale proceeds to Plaintiff.
7. Defendant's disposition of the three (3) Rolex watches was intentional and with the intent to cause Plaintiff financial harm.
8. Defendant did not reaffirm the debt owed to Plaintiff.
9. That the time allowed by law and specified in the Summons for Defendant to respond has expired.
10. That Defendant has failed to plead or otherwise defend this action and is in default.

#### **CONCLUSIONS OF LAW**

1. The debt owed by Defendant to Plaintiff is non-dischargeable pursuant to 11 U.S.C. §523(a)(6).
2. Plaintiff is entitled to default judgment for the relief requested in its Complaint against Defendant, Daniel J. Galarowicz.

#### **ORDER FOR JUDGMENT**

1. Plaintiff's Motion for Default Judgment is granted.
2. The debt owed to Plaintiff is excepted from discharge granted to Defendant on August 16, 2004 pursuant to 11 U.S.C. §523(a)(6).
3. Judgment in favor of Plaintiff and against Defendant shall be entered in the amount of \$19,748.00, plus costs of \$150.00 for the filing fee.

4. Judgment shall be entered for attorneys fees in the amount of \$500.00.

**LET JUDGMENT BE ENTERED ACCORDINGLY.**

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Nancy C. Dreher  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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**UNSWORN CERTIFICATE OF SERVICE**

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I, Ellen Cha, declare under penalty of perjury that on October 11, 2004, I mailed copies of the attached Notice of Hearing and Motion for Default Judgment, Affidavit of Default, Affidavit of Identification and Non-Military Status, Affidavit on the Merits and Amount Due, Memorandum, and Proposed Findings of Fact, Conclusions of Law and Order for Judgment, by first class mail postage prepaid to each entity named below at the address stated below for each entity.

Daniel J. Galarowicz  
807 11<sup>th</sup> Avenue South, Apt# 5  
Hopkins, MN 55343

David Kingsbury  
Kingsbury & Associates  
14827 Energy Way  
Apple Valley, MN 55124

Executed on: October 11, 2004

Signed: /e/Ellen Cha  
STEWART, ZLIMEN & JUNGERS  
Attorneys for Plaintiff  
430 Oak Grove Street, #200  
Minneapolis, MN 55403  
612-870-4100