

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION

CASE NO. : 07-60534-CIV-DIMITROULEAS  
MAGISTRATE JUDGE: ROSENBAUM

HOWARD K. STERN,

Plaintiff,

vs.

JOHN M. O'QUINN and  
JOHN M. O'QUINN & ASSOCIATES PLLC  
d/b/a The O'Quinn Law Firm

Defendants.

APPLICATION FOR ENTRY OF DEFAULT

NOW COMES Plaintiff Howard K. Stern and, pursuant to Fed. R. Civ. P. 55(a), hereby respectfully requests that the Clerk of Court enter the default of Defendants John M. O'Quinn ("O'Quinn") and John M. O'Quinn & Associates, PLLC d/b/a The O'Quinn Law Firm ("The O'Quinn Law Firm"), showing the Court as follows:

1. Fed. R. Civ. P. 55(a) provides that "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default." See, e.g., In re Knight, 833 F.2d 1515, 1516 (1987) ("Where a party offers no good reason for the late filing of its answer, entry of default judgment against that party is appropriate."); Tyco Fire & Security, LLC v. Alcocer, 218 Fed. Appx. 860, 2007 WL 542583, \*1 (11th Cir. Feb. 22, 2007) (not reported in the Federal Reporter).

2. Stern filed the Complaint in this action against Defendant O'Quinn on April 13, 2007.
3. Defendant O'Quinn filed a Motion to Dismiss Stern's Complaint on July 17, 2007 [DE 17].
4. On November 1, 2007, Stern moved to amend his Complaint to, among other things, add The O'Quinn Law Firm as a Defendant [DE 62].
5. On November 2, 2007, this Court granted Stern's motion to amend the Complaint [DE 63], and the Amended Complaint was filed with the Court on November 9, 2007 [DE 64].
6. On December 4, 2007, Defendant The O'Quinn Law Firm acknowledged service of the Amended Complaint [DE 76].
7. Defendants O'Quinn and The O'Quinn Law Firm filed two Motions to Dismiss Stern's Amended Complaint on December 10, 2007 [DE 79, 80].
8. On July 11, 2008, this Court denied Defendants' Motion to Dismiss the Amended Complaint for Lack of Personal Jurisdiction [DE 143].
9. On August 8, 2008, this Court denied Defendants' Motion to Dismiss the Amended Complaint for Failure to State a Claim [DE 156].
10. According to Federal Rules of Civil Procedure 12(a)(4)(A) and 6(a)(2), the Defendants' Answers to the Amended Complaint were due on August 22, 2008.
11. Defendants O'Quinn and The O'Quinn Law Firm have "failed to plead or otherwise defend" in this action as contemplated by Fed. R. Civ. P. 55(a),

as shown in the Affidavit of Luke A. Lantta, which is attached hereto as Exhibit A.

A proposed entry of default form is attached hereto as Exhibit B for the Court's convenience.

Dated: September 15, 2008.

/s/ L. Lin Wood

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*Attorneys for Plaintiff*  
*Howard K. Stern*

**CERTIFICATE OF SERVICE**

I hereby certify that on September 15, 2008, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

Robert M. Klein, Esq.  
Robert G. Mandel, Esq.  
Cayla B. Tenenbaum, Esq.  
Law Offices of Stephens Lynn La Cava  
Hoffman & Puya, P.A.  
Two Datan Center – Penthouse II  
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*Attorneys for Defendants*

This 15th day of September, 2008.

Neil M. McCabe, Esq.  
The O'Quinn Law Firm  
Suite 2300, 440 Louisiana  
Houston, Texas 77002

*Attorneys for Defendants*

/s/ M. Krista Barth  
M. Krista Barth  
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*Attorney for Plaintiff*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
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CASE NO. : 07-60534-CIV-DIMITROULEAS  
MAGISTRATE JUDGE: ROSENBAUM

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Defendants.

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**AFFIDAVIT OF LUKE A. LANTTA**

Luke A. Lantta appeared before the undersigned officer, duly authorized to administer oaths, and being first duly sworn, deposed and said:

1. My name is Luke A. Lantta.
2. I am an attorney licensed to practice law in the State of Georgia and have been a member of the Georgia Bar in good standing since 2004.
3. I gained pro hac vice admission to represent the Plaintiff, Howard K. Stern, in this action by order of the Court dated April 24, 2007 [DE 13].
4. I am an associate lawyer in the law firm of Powell Goldstein LLP, counsel of record for the Plaintiff in this action.
5. This affidavit is given for the use of the Plaintiff in support of the Plaintiff's Application for Entry of Default and for such other of his uses as may be permitted by law.

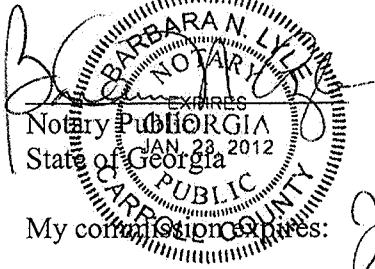
6. The facts set forth in this declaration are known to me personally and I am competent to so testify.
7. Defendant John M. O'Quinn ("O'Quinn") is an individual resident of the State of Texas.
8. Defendant O'Quinn is not an infant, and I know of no evidence indicating that he is an incompetent person, or a person in military service or otherwise exempted from default judgment under the Soldiers' and Sailors' Civil Relief Act of 1940.
9. Defendant O'Quinn was served properly with a copy of the Complaint and Amended Complaint in this action.
10. Defendant John M. O'Quinn & Associates PLLC d/b/a The O'Quinn Law Firm ("The O'Quinn Law Firm") is a Texas limited liability company organized as a law firm with its main office located in Houston, Texas.
11. I know of no evidence indicating that Defendant The O'Quinn Law Firm is exempted from default judgment.
12. Defendant The O'Quinn Law Firm was served properly with a copy of the Amended Complaint in this action.
13. Defendants O'Quinn and The O'Quinn Law Firm filed two Motions to Dismiss Stern's Amended Complaint on December 10, 2007 [DE 79, 80].
14. On July 11, 2008, this Court denied Defendants' Motion to Dismiss the Amended Complaint for Lack of Personal Jurisdiction [DE 143].
15. On August 8, 2008, this Court denied Defendants' Motion to Dismiss the Amended Complaint for Failure to State a Claim [DE 156].

- 16. Accordingly, the Defendants' Answers to the Amended Complaint were due on August 22, 2008.
- 17. Plaintiff has not granted Defendants an extension within which to answer or otherwise respond to the Amended Complaint.
- 18. Defendants have not answered the Amended Complaint within the time permitted by law and are in default.

Further Affiant saith not.

  
\_\_\_\_\_  
Luke A. Lantta

Subscribed and sworn  
before me this 15<sup>th</sup> day of September, 2008.

  
My commission expires: January 23, 2012

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d/b/a The O'Quinn Law Firm

Defendants.

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**ENTRY OF DEFAULT**

1. Defendants John M. O'Quinn ("O'Quinn") and John M. O'Quinn & Associates PLLC d/b/a The O'Quinn Law Firm ("The O'Quinn Law Firm") were properly served with copies of the Amended Complaint.
2. Defendants O'Quinn and The O'Quinn Law Firm filed two Motions to Dismiss Stern's Amended Complaint on December 10, 2007 [DE 79, 80].
3. On July 11, 2008, this Court denied Defendants' Motion to Dismiss the Amended Complaint for Lack of Personal Jurisdiction [DE 143].
4. On August 8, 2008, this Court denied Defendants' Motion to Dismiss the Amended Complaint for Failure to State a Claim [DE 156].
5. Defendants' Answers to the Amended Complaint were due on August 22, 2008.

6. Defendants have not answered the Amended Complaint within the time permitted by law and are in default.

Therefore, this Court hereby enters a default as to Defendants O'Quinn and The O'Quinn Law Firm.

**IT IS SO ORDERED, this \_\_\_\_\_ day of September 2008.**

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Clerk of Court  
United States District Court  
Southern District of Florida