

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.

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**REQUEST FOR ENTRY OF DEFAULT JUDGMENT AS TO DEFENDANTS  
JOHN M. O'QUINN AND JOHN M. O'QUINN & ASSOCIATES, PLLC  
AFTER ASSESSMENT OF DAMAGES BY A JURY**

NOW COMES Plaintiff Howard K. Stern and, pursuant to Fed. R. Civ. P. 55(b)(2), hereby respectfully requests that the Court enter default judgment against 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"), jointly and severally, after assessment of Stern's damages by a jury, showing the Court as follows:

**DEFENDANTS ENTERED DEFAULT AS OF SEPTEMBER 16, 2008**

1. On September 16, 2008, the Clerk of Court made an entry of default on the docket as to 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") [DE 176].

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]. On July 11, 2008, this Court denied Defendants' Motion to Dismiss the Amended Complaint for Lack of Personal Jurisdiction [DE 143]. On August 8, 2008, this Court denied Defendants' Motion to Dismiss the Amended Complaint for Failure to State a Claim [DE 156]. Therefore, 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.
3. Though the issue of Defendants' answers—including the fact that they were due in several days—was discussed extensively during the August 13, 2008 hearing before Judge Rosenbaum, only after Default was entered by the Clerk of Court against Defendants O'Quinn and The O'Quinn Law Firm did Defendants file their untimely Answer on September 16, 2008 [DE 178].

**DEFAULT JUDGMENT SHOULD BE ENTERED**

4. Fed. R. Civ. P. 55(b)(2) provides as follows:

In all other cases [not involving a sum certain], the party must apply to the court for a default judgment. A default judgment may be entered against a minor or incompetent person only if represented by a general guardian, conservator, or other like fiduciary who has appeared. If the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 3 days before the hearing. The court may conduct hearings or make referrals—preserving any federal statutory right to a jury trial—when, to enter or effectuate judgment, it needs to:

- (A) conduct an accounting;
- (B) determine the amount of damages;

(C) establish the truth of any allegation by evidence; or

(D) investigate any other matter.

5. The general rule of law is that when a party is in default, the factual allegations of the complaint, except those relating to the amount of damages, will be taken as true. Pope v. United States, 323 U.S. 1, 12 (1944); Flaks v. Koegel, 504 F.2d 702, 202 (2d Cir. 1974).
6. As this Court has recognized in its Order denying Defendants' Motion to Dismiss for Failure to State a Claim, Stern has appropriately stated claims for defamation and for false light invasion of privacy. [See DE 156].
7. Thus, there is no dispute that Stern has satisfied the well-pleaded complaint requirements of Federal Rule of Civil Procedure 8(a).
8. Accordingly, Defendants' liability to Stern is deemed established. See Fed. R. Civ. P. 8(b)(6) ("An allegation—other than one relating to the amount of damages—is admitted if a responsive pleading is required and the allegation is not denied); see also Trans World Airlines, Inc. v. Hughes, 449 F.2d 51, 63 (2d Cir. 1971) (once a default is entered, a defendant is deemed to have admitted all well-pleaded allegations in the complaint).

**STERN IS PREJUDICED BY FAILURE TO ENTER DEFAULT JUDGMENT**

9. Pursuant to the Court's August 23, 2007 Order Setting Trial Date & Discovery Deadlines, the discovery period in this action expires on September 19, 2008 [DE 47].
10. Defendants filed their untimely Answer on September 16, 2008—three (3) days before the discovery period expires. Due to Defendants' failure to file an answer,

Stern has had to conduct discovery without knowing the full extent of Defendants' defenses and has thus been prejudiced because he has not been able to conduct discovery directly aimed at piercing those defenses. For example, during the August 13, 2008 hearing before Judge Rosenbaum, counsel for Defendants would not even admit whether truth would be used as a defense to the allegations in the Amended Complaint.

11. The discovery period in this action is set to expire in three (3) days, and this Court has denied an extension of the discovery period [DE 173].
12. Stern would, therefore, suffer prejudice if the Court fails to enter default judgment against Defendants. See Thompson v. American Home Assur. Co., 95 F.3d 429, 433-34 (6th Cir. 1996) (increased difficulties with discovery results in prejudice to the non-defaulting party).

**STERN'S DAMAGES ARE THE ONLY REMAINING ISSUE FOR THE COURT**

13. Stern's claim against Defendants is not for a sum certain, and, therefore a hearing or trial to determine the amount of Stern's damages is required. Fed. R. Civ. P. 55(b)(2)(B).
14. Stern has requested a jury trial in this action.
15. The only remaining issue to be determined is the amount of damages sustained by Stern.

**CONCLUSION**

Accordingly, Stern respectfully requests that this Court enter a default judgment against Defendants John M. O'Quinn and John M. O'Quinn & Associates PLLC d/b/a

The O'Quinn Law Firm, jointly and severally, after assessment of Stern's damages by a jury as provided in Federal Rule of Civil Procedure 55(b)(2).

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

Dated: September 16, 2008.

/s/ L. Lin Wood

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*Attorneys for Plaintiff*

*Howard K. Stern*

**CERTIFICATE OF SERVICE**

I hereby certify that on September 16, 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:

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*Attorneys for Defendants*

This 16th day of September, 2008.

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*/s/ M. Krista Barth*

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MAGISTRATE JUDGE: ROSENBAUM

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Defendants.

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**DEFAULT JUDGMENT AS TO DEFENDANTS  
JOHN M. O'QUINN AND JOHN M. O'QUINN & ASSOCIATES, PLLC  
AFTER ASSESSMENT OF DAMAGES BY A JURY**

Plaintiff Howard K. Stern's Motion for Default Judgment as to 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") After Assessment of Damages by a Jury, having come before this Court and the same having been read and considered, Defendants O'Quinn and The O'Quinn Law Firm by their Default have admitted and the Court hereby finds as follows:

1. Defendants O'Quinn and The O'Quinn Law Firm were properly served with the Complaint and the Amended Complaint, respectively, and failed to timely answer and, therefore default was entered against them on September 15, 2008 [DE 176];
2. The Amended Complaint sought unspecified compensatory and punitive damages, as well as costs, against Defendants O'Quinn and The O'Quinn Law Firm, jointly and severally;

3. Stern has demanded a jury trial in this action; and
4. The only remaining issue to be determined is the amount of damages sustained by Stern; therefore,

It is hereby ordered, adjudged, and decreed that, pursuant to Fed. R. Civ. P. 55(b)(2), the issue of the amount of damages sustained by Stern shall be submitted to a jury during the two-week trial calendar commencing Monday, December 29, 2008; and

It is further ordered that on such determination, default judgment be entered for Stern and against Defendants John M. O'Quinn and John M. O'Quinn & Associates PLLC d/b/a The O'Quinn Law Firm, jointly and severally, for the amount of damages as assessed by the jury and for costs of suit, without further hearing or order of this Court.

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

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William P. Dimitrouleas  
United States District Judge  
Southern District of Florida