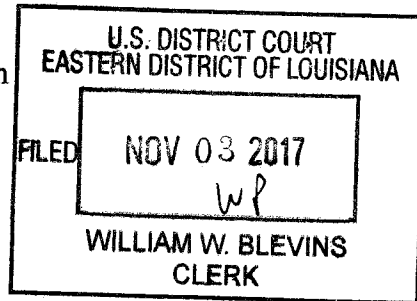


**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

Howard Anthony Brown
And Belden Batiste
Plaintiff

-Vs-



DOCKET NO.: 17-CV-9627

JUDGE JANE TRICHE MILAZZO

MAGISTRATE JUDGE KAREN
WELLS ROBY

TOM SCHEDLER, in his official capacity as Secretary of State;
JEFF LANDRY, in his official capacity as Attorney General;
Judge JAMES F. MCKAY, III, Judge EDWIN LOMBARD,
Judge DANIEL L. DYSART, Judge ROSEMARY LEDET,
Judge PAULA A. BROWN and Judge KERN A. REESE,
in their official capacities

Defendants

**PLAINTIFF'S MOTION TO STRIKE THE
DEFENDANT'S MOTION TO DISMISS**

NOW INTO COURT, comes Howard Anthony Brown and Belden Batiste who move this court to strike the Defendant's JAMES F MCKAY III, EDWIN LOMBARD, DANIEL L. DYSART, ROSEMARY LEDET and PAULA A. BROWN. All judges, of the Louisiana Fourth Circuit Court of Appeal and KERN REESE, Judge Civil District Court, Motion to Dismiss for the following reasons:

1.

This court docket will show that on the 9/26/2017, a complaint was filed against the named defendants.

2.

The docket will show that all the named defendants were served a copy of the complaint on 9/27/2017.

Fee _____
Process _____
☒ Dktd _____
CtRmDep _____
Doc. No. _____

3.

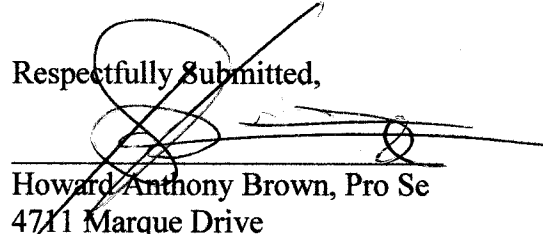
The docket will also show that on 10/25/2017, the plaintiffs executed an Entry of Default against the named defendants, JAMES F. MCKAY III, EDWIN LOMBARD, DANIEL L. DYSART, ROSEMARY LEDET, PAULA A. BROWN and KERN REESE. Which appears as number 10 on the docket, in error.

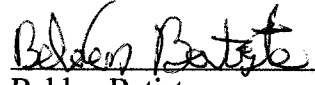
4.

The docket will further show, that the named defendants took no action, did not plea or otherwise defend pre the filling of the Entry of Default as evidence item number 9 on the docket, dated 10/26/2017.

WHEREFORE, Plaintiff's move this court to strike defendants Motion to Dismiss and honor the executed Entry of Default against the named defendants.

Respectfully Submitted,


Howard Anthony Brown, Pro Se
4711 Marque Drive
New Orleans, Louisiana 70127
(504) 251-1203


Belden Batiste
1421 North Miro
New Orleans, Louisiana

504-251-1203

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been served upon all parties or attorneys of record to this proceeding by email and by placing a properly addressed and postage first class in the U.S. Postal Service. On this 3rd day, of November 2017.

U.S. Mail Service

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and
Sheri M. Morris
Email: Smorris@rodelparsons.com
Counsel for Defendant Jeff Landry

/s/ Howard Anthony Brown
/s/ Belden Batiste

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

Howard Anthony Brown
And Belden Batiste
Plaintiffs

DOCKET NO.: 17-CV-9627

JUDGE JANE TRICHE MILAZZO

-Vs-

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TOM SCHEDLER, in his official capacity as Secretary of State;
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Judge DANIEL L. DYSART, Judge ROSEMARY LEDET,
Judge PAULA A. BROWN and Judge KERN A. REESE,
in their official capacities
Defendants

**MEMORANDUM IN SUPPORT OF MOTION TO
STRIKE THE DEFENDANTS MOTION TO DISMISS**

Howard Anthony Brown and Belden Batiste (Plaintiffs), respectfully files this
Memorandum in Support of its Motion to Strike, defendants Motion to Dismiss pursuant to Fed.
R. Civ. P. 55.

INTRODUCTION

Defendants has filed a motion to dismiss plaintiff's complaint on 10/26/2017. As shown on the docket as 9. This action was taken after the Entry of Default was entered on the record dated 10/25/2017, as indicated on the docket as number 10. Subsequently, an order was issued by Deputy Clerk Erin Mouledous, denying the Entry of Default stating as reason that defendants "since joined in this matter and filed a Motion to Dismiss". Indicated on the record as docket number 9.

FACTUAL BACKGROUND

On 10/25/2017, plaintiffs in the above caption matter filed a well-executed, affidavit attached Entry of Default in this matter. The record was checked and none of the named defendants had pleaded or otherwise defend. The record will indicate that on 9/26/2017, a complaint was filed against the defendants, that on 9/26/2017 summons were issued and that on 9/27/2017 summons were returned, executed on all named defendants.

The record will further show that the named defendant's only response was on 10/26/2017 and this response was a Motion to Dismiss for failure to state a claim. Way passed the time allotted by law to do so.

LAW AND ARGUMENT

1. Defendants has filed with this court a motion to dismiss for failure to state a claim, after the entry of default was executed. Rule 55 of the Federal Rules of Civil Procedure govern default judgements. This device allows a plaintiff to gain requested relief after a defendant has failed to take a required action within a certain time frame. See 46 AM. JUR.2D Judgments § 232 (2011). Its purpose are to keep dockets current and to prevent dilatory defendants from impeding the speedy disposition of plaintiffs' claims.

The text of the rules provides "When 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." Fed. R. Civ. P. 55(a). The party seeking relief may then apply to the court for default judgment. Fed. R. Civ. P. 55(b) (2).

A. Rule 55 establishes a two-part process by which a plaintiff can seek default judgment. Rule 55(a) directs the clerk of court to enter a default against a defendant who has

“Failed to plead or otherwise defend” when that failure is shown “by affidavit or otherwise”.

Default constitutes an admission of liability, but not damages”. See *Mickalis Pawn Shop*, 645 F.3d at 128. After the clerk has entered default, the party seeking relief must apply to the court for a default judgment. Fed. R. Civ. P. 55(b) (2). In limited situations, Rule 55(b)(1) requires the clerk to enter judgment *sua sponte* in cases where the relief sought is a definite sum of money and where the plaintiff has submitted an affidavit showing the amount due.

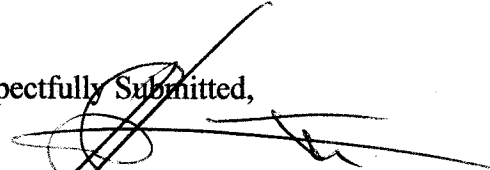
B. The rule and the procedures here are clear as to when and whom can enter an Entry of Default. The rule further makes it clear of the two-part process. An Entry of Default, first must be entered if the responding party fails to plea or otherwise defend within a certain timeframe, which in this instant case, all elements to that effect were met. The clerk in this case, Deputy Clerk, Erin Mouledous erred in rendering the order denying the entry of default.

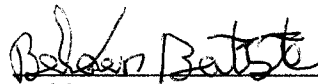
Also, a key point to note, the entries on the dockets are out of sequence, which would then allow the Clerk to render such a decision. Which to a greater extent can be deemed an act of prejudice by this court.

CONCLUSION

For the reasons described above, the Motion to Dismiss that was entered on the record by the named Defendants on 10/26/2017, should be stricken and the order by the clerk denying the Entry of Default should be reversed and the Entry of Default should be recognized.

Respectfully Submitted,


Howard Anthony Brown, Pro Se
4711 Marque Drive
New Orleans, Louisiana
(504) 251-1203



Belden Batiste
1421 North Miro
New Orleans, Louisiana

504-251-1203

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been served upon all parties or attorneys of record to this proceeding by email and by placing a properly addressed and postage first class in the U.S. Postal Service. On this 3rd day, of November 2017.

U.S. Mail Service

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Counsel for Tom Schedler

Christina B. Peck
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and
Sheri M. Morris
Email: Smorris@roedelparsons.com
Counsel for Defendant Jeff Landry

/s/ Howard Anthony Brown

/s/ Belden Batiste

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

Howard Anthony Brown et al
PLAINTIFF(S)

VERSUS

Tom Schedler et al
DEFENDANT(S)

CIVIL ACTION

No. 17-9627

SECTION: H, 4

NOTICE OF SUBMISSION

PLEASE TAKE NOTICE that the Motion To Strike is
hereby set for submission before District Judge/Magistrate Judge Milazzo on
11/29/2017 at 9:30 .m.

Belden Bates
(Signature)

Howard Anthony Brown
(Name)

4711 MARQUE DR
(Address)

New Orleans LA 70127
(City)

(State)

(Zip)

504-251-1203
(Telephone)

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy
of this document on all counsel of record
either in person or by mailing it postage
prepaid on this 03 day of
November, 2017.

[Signature]
(SIGNATURE)