

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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LAWRENCE E. GILDER,

1:15-cv-04094-KAM-RER

Plaintiff,

-against-

**AFFIRMATION OF  
RICHARD A. LUTHMANN**

JOHN P. GULINO, both individually and in his capacity as the Chairman of the DEMOCRATIC COMMITTEE OF RICHMOND COUNTY, DEMOCRATIC COMMITTEE OF RICHMOND COUNTY, BOARD OF ELECTIONS IN THE CITY OF NEW YORK, CLERK 1, CLERK 2 and CLERK 3, said names being as of yet unidentified parties, JOHN and JANE DOES 1-10, said names being fictitious; XYZ ENTITIES 1-10, said names being fictitious,

Defendants.

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RICHARD A. LUTHMANN, ESQ., an attorney at law duly admitted to practice in the United States Court for the Eastern District of New York, affirms the following under penalties of perjury:

1. I represent LAWRENCE E. GILDER ("Mr. Gilder"), the Plaintiff in this matter.
2. I make this affirmation in support of Motion for Default Judgment as against the Defendant BOARD OF ELECTIONS IN THE CITY OF NEW YORK ("NYCBOE").
3. The Clerk's Certificate of Default is attached herewith as Exhibit "A".
4. The Claim to which no response has been made is attached herewith as Exhibit "B".
5. The copy of a proposed judgment is attached herewith as Exhibit "C".
6. NYCBOE is not an infant or incompetent person.

7. NYCBOE is not in the military service.

8. NYCBOE was properly served under Fed. R. C. P. 4 and proof of service was filed with the court

9. NYCBOE has defaulted in appearance in the above captioned action.

10. This is an action based on the invidious discrimination perpetrated as against Mr. Gilder.

11. Action was instituted in this Court by service of a Summons and Complaint. Said Summons and Complaint were served upon the NYCBOE on July 15, 2015, pursuant to the Return of Service of the Summons and Complaint filed and entered into the Civil Docket for this matter on the CM/ECF system at # 4.

12. Pursuant to the Civil Docket for this matter on the CM/ECF system at # 4, the Clerk of the Court fixed the time to answer or otherwise respond for the Defendant NYCBOE by August 5, 2015.

13. The Defendant NYCBOE has failed to respond to plaintiff's Summons and Complaint by August 5, 2015, the time proscribed by the Federal Rules of Civil Procedure.

14. The time period for said defendant to answer the Summons and Complaint has elapsed and said defendant has failed to interpose an answer or otherwise respond and is entitled to the relief requested under Rule 55 of the Federal Rules of Civil Procedure.

15. Mr. Gilder specifically reserves all rights under Rule 55 of the Federal Rules of Civil Procedure.

16. Mr. Gilder specifically requests a hearing on fees, costs and damages in this matter.

17. Mr. Gilder specifically requests that the Court take judicial notice of the NYCBOE's liability in this matter as based upon intentional and / or reckless conduct and that the Court recognize the availability of fees, costs, compensatory and punitive damages in this matter.

18. The undersigned had previously communicated to counsel for the NYCBOE, Mr. Richman, the requirement to respond in this matter on August 4, 2015.

19. Specifically, the undersigned had divulged the stipulation as between the plaintiff and defendants John P. Gulino and the Democratic Committee of Richmond County, extending the time to answer or otherwise respond until September 15, 2015.

20. Mr. Richman responded: "That's Passover."

21. The undersigned responded: "I'm not going to be an a\*\*hole. Check the ECF and call me. I don't mind giving you until September 30<sup>th</sup>."

22. Counsel for the NYCBOE never called or communicated with the undersigned for an extension of time to answer or otherwise respond prior to the expiration of the applicable time.

23. The undersigned respects the High Holy days ordained by the God of Abraham and Isaac, and even despite no contact from counsel for the NYCBOE, has intentionally noticed the return date of this motion well beyond any High Holy days in the Jewish faith so as not to inconvenience any attorneys at the NYCBOE.

24. The undersigned has intentionally noticed the return date of this motion well beyond any High Holy days in the Jewish faith so as not to inconvenience any attorneys at the NYCBOE.

25. Nonetheless, the Defendant NYCBOE is in default and relief under Rule 55 is requested.

26. In view of the aforesaid, your affirmant respectfully requests that an Order be granted for default judgment and inquest in favor of plaintiff and for such other and further relief as may be just, proper, and equitable as against the Defendant.

### **CONCLUSION**

27. For the foregoing reasons, the plaintiff's application should be granted.

**WHEREFORE**, plaintiff respectfully requests that the Court grant an Order pursuant to Federal Rules of Civil Procedure granting default judgment and inquest in favor of the plaintiffs and such other and further relief as may be just, proper, and equitable.

I declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge, information and belief, that the amount claimed is justly due to plaintiff, that no part thereof has been paid, and that the disbursements sought to be taxed have been made in this action or will necessarily be made or included in this action.

Dated: Staten Island, New York  
August 6, 2015

Respectfully submitted,

/s/ RICHARD A. LUTHMANN

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