IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

ERNEST TAYLOR	§	CIVIL ACTION
	§	
Plaintiff,	§	
	§	
VS.	§	
	§	
THE CITY OF BATON ROUGE, ET AL.	§	NO. 13-579-BAJ-RLB
	§	
Defendants.	§	

PLAINTIFF'S RESPONSE TO DEFENDANTS'
MOTION TO SET ASIDE DEFAULT

I. Introduction

While styled as a Motion to Set Aside a Default, Defendants' Motion appears to be directed primarily at claims for which a default judgment has already been entered. As set forth below, to the extent that Defendants' Motion is intended to attack the Court's Order granting default judgment on Plaintiff's Second Amendment claims, it ignores the applicable law and the previous pronouncements of this Court, and should be denied. On the other hand, to the extent that Defendant's Motion is directed at setting aside the Clerk's entry of default with respect to those claims for which default judgment has not already been granted, and which stillremain for resolution, Plaintiff does not oppose the Court's grant of such relief.

II. Procedural History

Plaintiff instituted this action on September 3, 2013, asserting claims pursuant to 42 U.S.C. §1983, the Second, Fourth, Fifth, and Fourteenth Amendments to the United States Constitution, and various provisions of Louisiana law. [Doc. 1]. Through his complaint. Plaintiff sought declaratory and injunctive relief in addition to monetary damages (including punitive

damages and attorney's fees) as a result of his arrest, detention, and the confiscation of his firearms by officers of the Baton Rouge Police Department on October 13, 2012. [Doc. 1]. Despite proper service, Defendants failed to answer Plaintiff's Complaint, and on April 16, 2014, the Clerk issued an order placing Defendants in default. [Doc. 17].

Without first seeking leave of Court, Defendants then filed an Answer to Plaintiff's Complaint on April 17, 2014, more than seven months after first being notified of Plaintiff's claims, and after the Clerk's entry of default. [Doc. 20]. On April 22, 2014, Defendants also moved to have the Clerk's entry of default set aside pursuant to Fed. R. Civ. P. 55(c). [Doc. 22]. Plaintiff opposed Defendants' request to set aside the entry of default and also filed a Motion to Strike Defendants' untimely answer. [Docs. 23 & 24]. Plaintiff subsequently moved for the entry of default judgment on his Second Amendment claims for injunctive and declaratory relief, and requested the Court to schedule a hearing with respect to the issue of monetary damages. *See* [Doc. 26]. In connection with seeking this relief, Plaintiff also proposed that a conference between the parties and the Court would likely be beneficial to address procedural issues in the event the court scheduled the hearing Plaintiff had requested. *See* [Doc. 26-1] at 24.

The Court held a hearing on pending motions on June 18, 2014. At that time, the Court found that Defendants had failed to establish the "good cause" required to set aside the Clerk's entry of default. At the hearing, the Court specifically found that Defendants "fail[ed] to provide any facts or evidence that establish good cause for the failure to timely file an answer." *See* Transcript of June 18, 2014 Hearing, excerpts attached as Exhibit A, at 28:13-16. Noting that it was Defendants' burden to establish that the failure to file an answer was due to excusable neglect, the Court found that, "[h]ere, again, the Defendants have failed to establish by a

preponderance of the evidence that the neglect was not willful," and that "the failure to file was due to inexcusable neglect." *Id.* at 29:6-8; 29:19-20. At the conclusion of the hearing, the Court denied Defendants' Motion to Set Aside the Default, Granted Plaintiff's Motion to Strike Defendants' late-filed answer, and deferred ruling on Plaintiff's Motion for Entry of Default Judgment pending further submissions by the parties. *See* [Doc. 30].

In an Order dated August 25, 2014, the Court granted Plaintiff's previously filed motion and entered default judgment with respect to his claims for injunctive and declaratory relief arising under the Second Amendment to the U.S. Constitution. [Doc. 69]. The Court also set a hearing to determine the amount of monetary damages to which Plaintiff is entitled pursuant to his Second Amendment claims.[1] [Doc. 69]. The Court's Order granting default judgment expressly excluded the other claims appearing in Plaintiff's complaint from its entry of default judgment, as Plaintiff had not sought default judgment with respect to those claims. *See id.* at 10, n.16.

On September 11, 2014, Defendants filed a Motion for Leave requesting permission to submit a motion to set aside the Clerk's default on those claims for which judgment had not yet been entered. [Doc. 74]. The following day, Plaintiff filed a motion requesting a status conference in order to address issues surrounding the Court's scheduled hearing, the other unresolved claims appearing in Plaintiff's operative complaint, and additional claims Plaintiff intends to bring as a result of events occurring after the filing of Plaintiff's original complaint. [Doc. 75]. Defendants thereafter filed a motion seeking to join in the request for a status conference. [Doc. 78]. Prior to the deadline for filing Plaintiff's pre-hearing memorandum, the parties jointly moved the court to continue the hearing on Plaintiff's monetary damages, and to

[1] The Court scheduled this hearing for October 23, 2014.

also suspend the briefing deadlines set in connection with the hearing. [Doc. 79]. After considering the parties' motion, the Court declined to suspend the briefing deadlines, but indicated it would take the request to continue the hearing under advisement. [Doc. 80].

III. Law and Argument

A. Defendants Misstate the Relevant Legal Standard

At the outset, it is imperative to discuss the unique procedural status in which the parties find themselves at this point in time. As addressed by Plaintiff in the introduction and in previous filings with the Court, Plaintiff's claims can currently be classified into two categories: (1) those claims upon which the court has entered default judgment (Second Amendment claims), and (2) those claims upon which the Clerk has previously entered default, but for which the Court has not entered default judgment (all other claims). Defendants' Motion to Set Aside Default fails to acknowledge this distinction, and the differing legal standards to be employed by the Court as a result.

Specifically, Defendants seek through their Motion to have the Court "set aside the Default entered on August 25, 2014." [Doc. 74-2] at 1. It is clear beyond dispute, however, that the Court's August 25th Order does not represent a "default" as Defendants assert in their Motion, but rather a "default judgment" as that term is used by the Fifth Circuit, and in the Federal Rules of Civil Procedure. The analysis set forth in this section will address Plaintiff's Second Amendment claims, which were addressed in the August 25th Order identified by Defendants in their Motion. Plaintiff's other claims, upon which default judgment has not be entered will be addressed in a separate section. As set forth below, the standard of law that Defendants assert is applicable, to the extent it is directed at Plaintiff's Second Amendment

claims, represents a clear misapprehension of the situation facing the Court, and the law which should be applied.

1. The Court Should Analyze Defendants' Motion Under the Requirements of Fed. R. Civ. P. 60(b), Made Applicable by Virtue of Fed. R. Civ. P. 55(c)

a. Fed. R. Civ. P. 55(c)

While Plaintiff does not disagree that the standard to be used in evaluating Defendants' request for relief is found in Fed. R. Civ. P. 55(c), the parties clearly dispute *which provision* of the rule applies. Rule 55(c), titled "Setting Aside A Default or a Default Judgment" states as follows:

> The court may set aside an entry of default for good cause, and it may set aside a default judgment under Rule 60(b).

Id. Thus, Rule 55(c) provides a different, albeit similar, standard for setting aside a *default* than it does for setting aside a *default judgment*. As stated by the Fifth Circuit:

> This circuit has interpreted Rule 60(b)(1) as incorporating the Rule 55 'good-cause' standard applicable to entries of default. This inquiry follows a recognition in our previous holdings that courts apply essentially the same standard to motions to set aside a *default* and a *judgment by default.* This court has also held that although a motion to set aside a default decree under Fed. R. Civ. P. 55(c) is somewhat analogous to a motion to set aside a judgment under Fed. R. Civ. P. 60(b), the standard for setting aside a default decree is less rigorous than setting aside a judgment for excusable neglect.

Taishan Gypsum Co. v. Gross (In re Chinese-Manufactured Drywall Prods. Liab. Litig.), 753 F.3d 521, 544, n.20 (5th Cir. La. 2014); quoting *In re OCA, Inc*., 551 F.3d 359, 369 (5th Cir. 2008); *United States v. One Parcel of Real Prop*., 763 F.2d 181, 183 (5th Cir. 1985). As a result, under binding 5th Circuit precedent, if the Court's August 25th Motion is a "default judgment," Defendants' Motion should be evaluated under a more rigorous standard than that previously employed by the Court when denying Defendant's Motion to Set Aside the Clerk's Entry of

Default.

b. Defendants' Case Law

Eschewing any textual reference to the Federal Rules of Civil Procedure, or any citation to case law arising in the 5th Circuit (whether binding or not), Defendants argue in a footnote that the more exacting requirements a Court is to apply when considering whether to set aside a default judgment should not be used in the present case, because the Court's order does not constitute a "final, appealable judgment." *See* [Doc. 74-4] at 2, n.1. Defendants' argument is not well-founded, and the cases cited by Defendants in support of their assertion bears this out.

Initially, Defendants cite to *Berthelsen v. Kane*, 907 F.2d 617, 620 (6th Cir. 1990) for the proposition that "a default judgment may be vacated only by satisfying the stricter standards applied to final, appealable orders under Fed. R. Civ. P. 60(b)." *Id.* Plaintiff does not disagree with the characterization given *Berthelsen* by Defendants, but this does not bear on the question of whether the Court's August 25th Order should be considered a "default judgment." Considering the relevant inquiry, the logic employed by the Sixth Circuit in *Berthelsen* is clearly inapplicable in the present case. As stated in the very first sentence of the opinion, Kane, the defendant "appeal[ed] from the entry of ***both a default and a default judgment*** by the district court in favor of plaintiff." 907 F.2d at 618. As noted by the court, after the entry of default in the lower court, but before the entry of default judgment, the defendant attempted to challenge the entry of default in the appellate court, but the Sixth Circuit declined jurisdiction "on the grounds that an entry of default is not a final judgment." *Id.* at 620. The district court subsequently entered default judgment on all claims, and at that point the defendant lodged another appeal challenging both the default and the default judgment. *Id.*

The Sixth Circuit, acknowledging a standard akin to the one used by the Fifth Circuit in evaluating motions to set aside defaults or default judgments, determined that it would analyze the issue under the "more liberal" standard applicable to entries of default, as opposed to the "stricter standards" applied to default judgments. *Id.* Applying this standard, the Court determined that the court had erred in failing to set aside the original entry of default, and that the both the default and default judgment should be vacated as a result. *Id.* at 622 ("we conclude that the default and the default judgment should be set aside"). *Berthelsen* stands only for the proposition that an appellate court may review both the initial entry of default and the entry of default judgment under the standards used by the trial court, since a defendant is precluded from appealing an entry of default prior to the entry of a final judgment.[2] Defendants' attempt to graft additional meaning onto the decision is unjustified and without merit.

Next, defendant cites to *Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353, 1364, n.27 (11th Cir. 1997) for the proposition that the Court's August 25th Order should be considered a default because "there can be no 'judgment' without a determination of relief." [Doc. 74-4] at 2, n.1 Again, Defendants' reliance is misplaced. At issue in *Chudasama* was the entry of a purported "default judgment" by the clerk of court (not the judge) in connection with an award of sanctions pursuant to Fed. R. Civ. P. 26 and 37. 123 F.3d at1364, n.27. The portion of the opinion upon which Defendants rely states as follows:

> Although the Chudasamas requested that a "default judgment" be entered; the court directed that a "default judgment" be entered; and the district court clerk filed a document entitled "default judgment," no judgment has been entered in this case. Defaults are governed by Rule 55. The clerk is required to enter a

[2] Furthermore, to the extent that Defendants' assert "appealability" as a factor to be considered in the determination of whether the Court's August 25th Order should properly be considered a "default judgment," Plaintiff notes that the order is subject to immediate appeal by virtue of 28 U.S.C. §1292(a)(1) (granting appellate courts jurisdiction over interlocutory district court orders granting injunctions).

> "default" when a party against whom relief is sought fails to "plead or otherwise defend" the claim. The clerk can only enter a "judgment by default" if the "plaintiff's claim … is for a sum certain or for a sum which can by computation be made certain."
>
> When the amount of damages is in dispute, as in the instant case, only the court may enter judgment, and then only after determining the amount of damages. There can be no "judgment" without a determination of relief. Thus, the document entitled "default judgment" in this case is more properly termed simply a default.

Id. (citations omitted).

The situation in *Chudasama* is clearly distinguishable from the case before this Court. As can be seen from the language of the 11th Circuit, the so-called "default judgment" was more properly considered a "default" because it had been filed by the *clerk*, without having previously entered a default under Rule 55(a). As stated in the opinion, the Federal Rules of Civil Procedure simply do not permit a clerk of court to enter a "default judgment" where the amount of damages is in dispute.

The error inherent in Defendant's interpretation of *Chudasama* was recognized by the Third Circuit in *Sourcecorp, Inc. v. Croney,* 412 Fed. Appx. 455, 459, n.4 (3rd Cir. 2011) (unpublished).[3] There, the court stated:

> We also reject Sourcecorp's argument that the December 9 judgment was not a genuine default judgment because it did not order any relief, and that therefore the January 8 order is the only default judgment in this case. Our court has previously defined a "final judgment" as one that "leaves nothing for the court to do but execute the judgment." However, nothing in the text of Rule 55 requires that a default judgment also be a final judgment. Further, Sourcecorp's reliance on *Chudasama v. Mazda Motor Corp.*, is misplaced. That case involved a purported "default judgment" that was entered by the clerk, not the judge. Therefore, it was far more clear that a simple error in terminology was at work, because the clerk was not empowered to issue a default judgment in the first

[3] While the Third Circuit reversed the entry of default judgment issued in *Sourcecorp*, it did so based upon the fact that the district court had issued the default judgment *sua sponte*, rather than upon application of the opposing party, as required by Rule 55(b)(2). That situation is not present here.

> place. Here, in contrast, it is implausible that the District Court understood itself to be doing anything but entering a true default judgment, particularly given that the court clerk had already noted Croney's default.

Id. (citations omitted).

As shown above, *Chudasama* is clearly distinguishable from the present case. Additionally, and perhaps more importantly, Defendants' argument that the August 25th Order should not be considered a default judgment because it affords no relief is simply wrong. As the text of the Order makes abundantly and irrefutably clear, Plaintiff was indeed afforded both declaratory and injunctive relief, once again emphasizing the disconnect between Defendants' arguments, and the issues to be determined by this Court.

The final case upon which Defendants rely for the proposition that the Court's August 25th Order should be considered only a default, and not a default judgment is *Dassault Systemes, SA v. Childress*, 663 F.3d 832, 840 (6th Cir. 2011). Defendants arguments find no support in this case either. In its opinion, the *Dassault* court initially recounted the procedural history of the case. *See id.* at 837-838. As stated by the court, without first having the clerk enter default pursuant to Rule 55(a), the defendant filed a "motion for default judgment," which the district court granted. *Id.* at 838. The parties then submitted briefing regarding damages, and the defendant filed a motion requesting that the court set aside the default judgment. *Id.* There is no indication, however, that the Plaintiff ever took any additional action (such as moving for the entry of judgment) after its initial motion was granted. Thereafter, the court denied the defendant's motion, issued a permanent injunction, and awarded damages to plaintiff, all on the same day. *Id.*

The court acknowledged that there existed ambiguity in the case, based in part on the plaintiff framing its initial motion as one for "default judgment" (instead of merely "default"),

along with the fact that the district court's order granting the motion utilized the same term. *Id.* The court also cited its prior precedent for the fact that "an entry of *default* may be made by either the clerk or the judge." *Id.* at 839; quoting *Shepard Claims Servs., Inc. v. William Darrah & Assocs.*, 796 F.2d 190, 194 (6th Cir. 1986). Acknowledging that that its binding precedent was "somewhat inconsistent," the court ultimately concluded that the initial order issued by the judge, although titled "default judgment," was, in fact, merely a default. *Id.* Citing again to Sixth Circuit precedent, the court found that "the stricter Rule 60(b) standard for setting aside a default judgment applies once the default has ripened into a judgment, meaning, once the court has determined damages and a judgment has been entered." *Id.*

Upon first glance, it may appear that the last sentence above, appearing in the *Dassault* case, lends some level of support to the arguments advanced by Defendants. Upon closer inspection, however, any semblance of applicability quickly fades. As stated above, the lower court had failed to fulfill Rule 55(a)'s requirement that an entry of default precede any entry of default judgment. Therefore, given the court's indication that an initial default could be entered by the judge, the district court's order, whose language indicated that default judgment had been entered (the only time default was addressed prior to the entry of final judgment) could only be considered a "default" for purposes of Rule 55. Thus, as in *Chudasama,* the issue identified in *Dassault* is really one of terminology, not substantive law. However, to the extent that the Sixth Circuit's opinion in *Dassault* does stand for the proposition argued by Defendants – that a default judgment necessitates a finding with respect to damages – the Fifth Circuit has clearly reached a different conclusion, as shown below.

c. The August 25th Order Is a Default Judgment

To the extent that Defendants argue that, under the law applicable to this case, there can be no default judgment absent a determination of damages, they are clearly incorrect. The duty to respond to a complaint is triggered by the service of summons or lawful process, and the failure to do so may result in the entry of default or default judgment under Federal Rule of Civil Procedure 55. *Fagan v. Lawrence Nathan Assocs.,* 957 F.Supp.2d 784, 795 (E.D. La. 2013); citing *Rogers v. Hartford Life & Accident Ins. Co.,* 167 F.3d 933, 937 (5th Cir. 1999). Once the Clerk of Court has found a defendant to be in default, the Court must then determine whether entry of default judgment should follow. *Id.* at 796; citing *T-Mobile USA, Inc. v. Shazia & Noushad Corp.,* 2009 U.S. Dist. LEXIS 59014 at *2 (N.D. Tex. 2009). This decision "is committed to the sound discretion of the district court, and is afforded great deference upon review." *Id.* at 796.

"A default judgment is a judgment on the merits that conclusively establishes the defendant's liability." *United States v. Shipco General, Inc.,* 814 F.2d 1011, 1014 (5th Cir. 1987); *see also, Leedo Cabinetry v. James Sales & Distrib.,* 157 F.3d 410, 414 (5th Cir. 1998). A default judgment does not, however, establish the damages to which a plaintiff is entitled. *Id.* at 1014; *see also, Hamilton v. Business Partners, Inc.,* 2000 U.S. Dist. LEXIS 842, *5 (E.D. La. 2000); *United States v. Boh Bros. Constr. Co., L.L.C.,* 2013 U.S. Dist LEXIS 149577, *23 (E.D. La. 2013); *J & J Sports Prods. V. Gamez,* 2013 U.S. Dist. LEXIS 59703, *2 (S.D. Tex. 2013); *Haygood v. A Child Is Born RTC,* 2014 U.S. Dist. LEXIS 48715, *3-*4 (W.D. Tex. 2014).

Considering the approach to default judgments used by courts lying within the Fifth Circuit, it is clear that the Court's August 25, 2014 order comprises a "default judgment" for purposes of Rule 55, as it is a judgment on the merits that conclusively establishes Defendants'

liability with respect to Plaintiff's Second Amendment claims. Defendants' assertion that the order is more appropriately considered nothing more than a default is contrary to the manner in which that term is used both in the Federal Rules of Civil Procedure and by the courts. *See e.g.* Rule 54(a) (defining "judgment" as including "any decree or order from which an appeal lies"); Rule 55(a) (indicating that "the clerk must enter the party's default" upon a proper showing); *Gross v. RSJ Int'l, LLC*, 2012 U.S. Dist. LEXIS 29138 (E.D. La.Mar. 6, 2012); citing *United States v. Hansen*, 795 F.2d 35, 37 (7th Cir. 1986) (characterizing the entry of default as "largely mechanical" and "an intermediate, ministerial, nonjudicial, virtually meaningless docket entry"). Defendant's argument is completely devoid of merit.

While it is clear that the standard applied to setting aside entries of default, advocated by Defendants, is inapplicable to Plaintiff's Second Amendment claims, this does not necessarily resolve the issue of what standard *should* be applied. Other courts have noted that, in situations such as those presently before the Court, it is unclear whether a court should review a motion to set aside a non-final default judgment under the requirements of Rule 60(b), as Rule 55(c) directs, or whether the more appropriate standard would be the one appearing in Rule 54(b). *See BMW of N. Am., L.L.C. v. Kuveyka*, 2014 U.S. Dist. LEXIS 95726 (M.D. Ala. 2014) (stating that Rules 54 and 55 provide "conflicting directions"). Plaintiff respectfully avers that Rule 55(c)'s unambiguous direction to utilize the standards provided by Rule 60(b) should control here. This would be in accord with the U.S. Supreme Court's directive that "[t]he Federal Rules [of Civil Procedure] should be given their plain meaning." *See Walker v. Armco Steel Corp*.,446 U.S. 740, 750, n. 9 (U.S. 1980). Furthermore, courts lying within the Fifth Circuit have not hesitated to evaluate interlocutory default judgments under the Rule 60(b) standard, despite the fact that no

final judgment had issued. *See e.g., Duran v. City of Eagle Pass,* 2011 U.S. Dist. LEXIS 8297 (W.D. Tex. 2011) (analyzing motion to set aside interlocutory default judgment under Rule 60(b) standard).

In any event, whether Defendants' Motion should be analyzed under Rule 54(b) or Rule 60(b) makes little difference. Analysis under Rule 60(b) would utilize the same three factors identified by Defendants' in their Motion – (1) whether the default was wilful; (2) whether setting aside the default judgment would prejudice Plaintiffs; and (3) whether the defendant has presented a meritorious defense – though the Court should be less lenient in considering the factors at this stage of the proceedings. In order to prevail under a Rule 54(b) analysis, Defendants would be required to show that there exists "substantial justification" for the Court to alter its previous decision. *See Cooper v. Wyeth, Inc.,* 2013 U.S. Dist. LEXIS 174228, *8 (M.D. La. 2013). The three major grounds justifying reconsideration under Rule 54(b) are: (1) an intervening change in controlling law; (2) the availability of new evidence; and (3) the need to correct clear error or prevent manifest injustice. *Id.,* quoting *J.M.C. v. Louisiana Bd. Of Elementary and Secondary Educ.,* 584 F.Supp. 894, 896 (M.D. La. 2008). Defendants have failed to establish their entitlement to relief under either standard.

B. Defendants Have Not Met Their Burden of Proving the Existence of "Good Cause" Applicable to Default Judgments

Remarkably, despite the fact that the Court entered default judgment against Defendants only after having afforded them numerous opportunities to provide anything other than unsubstantiated musings in defending against Plaintiff's claims, Defendants resort to precisely the same strategy in their present motion. Defendants' Motion does not seek to provide the Court with any evidence, nor does it provide any argument or justification for setting aside the

default judgment entered that has not previously been advanced. Instead, Defendants' Motion reads as if they are entirely unaware of the previous proceedings in this case, or the manner by which the Court previously resolved the same issues under a more lenient standard. Each of Defendants' arguments is taken in turn.

1. Defendants Have Once More Failed to Provide Any Evidence That Their Failure to Respond Was Anything Other Than Willful

Defendants, without acknowledging its burden of proof, asserts that "there is no indication that the defendants deliberately intended to violate court rules." [Doc. 74-4] at 4. Not only does this statement attempt to shift the burden of proof away from Defendants, where it properly lies, but it is also directly contradicted by the record established in this case, along with admissions appearing in Defendants' Motion.

A willful default is an intentional failure to respond to litigation. *See e.g., Scott v. Carpanzano,* 2014 U.S.App. LEXIS 1489, *15 (5th Cir. 2014) (unpublished) citing *In re OCA, Inc.,* 551 F.3d 359, 372 (5th Cir. 2008). "A finding of willful default ends the inquiry, for when the court finds an intentional failure of responsive pleadings there need be no other finding." *Baldwin v. Taishang Gypsum Co., Ltd. (In re Chinese-Manufactured Drywall Prods. Liab. Litig.),* 742 F.3d 576, 594 (5th Cir. 2014); citing *Lacy v. Sitel Corp.,* 227 F.3d 290, 291-292 (5th Cir. 2000). Where a defendant's neglect is at least a partial cause of its failure to respond, the defendant has the burden to convince the court that its neglect was excusable, rather than willful, by a preponderance of the evidence. *Id.,* citing *Rogers v. Hartford Life & Accident Ins. Co.,* 167 F.3d 933, 939 (5th Cir. 1999); *In re OCA, Inc.,* 551 F.3d at 372. The inquiry of whether a defendant's failure to respond was willful properly focuses on the time period before the entry of default. *Id.* Thus, a defendant's prompt response to a suit after being placed in default cannot

cure a default resulting from wilful conduct or inexcusable neglect. *Id.* Whether a defendant's failure to answer was willful is a factual determination to be made by the Court. *In re OCA, Inc.*, 551 F.3d at 367.

According to Defendants, their failure to file an answer or other responsive pleading in this case cannot be considered willful because "there is no indication that the defendants deliberately intended to violate court rules." [Doc. 74-4] at 4. Considering other assertions appearing in Defendants' Motion, the statement is ludicrous. There is, in fact, ample evidence to support the fact that Defendants' failure to file responsive pleadings was willful – all of which has previously been reviewed by the Court. As noted by the Court in its August 25th Order, counsel for Defendants signed a waiver of service on October 22, 2013 acknowledging that Defendants must file an answer or Rule 12 Motion within 60 days of September 9, 2013 (November 8, 2013), or risk having a default judgment entered against them. [Doc. 69] at 3. Despite this knowledge, and without seeking an extension from the Court or the agreement of Plaintiff's counsel[4], Defense counsel made the unilateral decision to let the deadlines expire without making the requisite filings.

In their Motion, Defendants assert that their counsel made the **conscious decision** to let the Court's deadline expire without making the requisite filings, assertedly to "wait[] to see how the Attorney General's Office intended to handle the criminal matter in order to determine whether it was more appropriate to file a stay." [Doc. 74-4] at 4-5. Not only do the Defendants fail to show by a preponderance of the evidence that their failure to respond was not willful, they

[4] Not only did counsel for Defendants fail to seek agreement from opposing counsel, he ignored requests from Plaintiff in December 2013 and February 2014 to "get[] an answer or some other appearance on the record" and inquiring whether progress was being made with respect to "getting things on file with the Court." *See* [Docs 23-3 and 23-4].

concede as much in presenting their argument.

In addition, Defendants ignore the fact that this Court has already taken the very same explanation, provided during a hearing held on July 30, 2014, into consideration and found them lacking:

> On July 30, 2014, the Court provided counsel for Defendants another opportunity to explain why Defendants failed to plead or otherwise defend the instant lawsuit. Counsels' attempt to do so was wholly inadequate. To date, Defendants have failed to provide the Court with an adequate explanation for their failure to plead or otherwise defend the instant lawsuit.

[Doc. 69] at 5.

The situation is no different today than when the Court made the above statement in its August 25th Order. Despite the Court's finding that the explanations previously provided by defense counsel were "wholly inadequate," Defendants do not even attempt to cure the inadequacy. Rather, they seek only to rehash precisely the same arguments that the Court has previously rejected. Such tactics will undoubtedly result in a considerable waste of time and effort by Plaintiff and the Court. The argument is frivolous, and should be rejected.

2. Setting Aside the Default Judgment Would Prejudice Plaintiff

Defendants next assert that "it is clear" that Plaintiff's will not be prejudiced if the default judgment is set aside due to "the early stage of the litigation" and Defendants' failed attempt to file a post-default Answer. [Doc. 74-4] at 6. In attempting to establish a lack of prejudice to Plaintiff, Defendants resort to making assertions which are not only unsupported, but which are entirely inaccurate. For instance, Defendants make reference to defense counsel's "ongoing interactions with plaintiff's counsel" and "Mr. Hilburn's reliance on negotiations he was undertaking with plaintiff's counsel." *Id.* at 5-6. To be sure, the undersigned has absolutely no idea what "negotiations" Defendants assert were being conducted between the parties, and

specifically denies that any such negotiations occurred. Furthermore, while Plaintiff also takes serious issue with Defendants' characterization of the interactions between the parties as "ongoing," even *if* this were true, it would not justify Defendants failure to file responsive pleadings as requested by Plaintiff and required by applicable law. Finally, the assertion that Defendants' late-filed answer would somehow obviate any prejudice to Plaintiff is at direct odds with additional findings stated in the Court's August 25th Order:

> As noted during the hearing on the instant motion, Defendants failed to file any pleadings that raised genuine disputes as to material facts related to the constitutionality of §13:95.3. Indeed, Defendants' answer to Taylor's allegation that §13:95.3 violates the Second Amendment was limited to the words "denied as written." Further, Defendants failed to file a motion under Rule 12 or 56. Thus, even if Defendants' Answer had not been stricken, the Court would be hard pressed to find any genuine disputes as to material facts related to the constitutionality of §13:95.3 that were raised by Defendants.

[Doc. 69] at 8, n.15. Defendants do not address this finding in connection with their Motion.

Further, Defendants' characterization of this suit as being in an "early stage" strains credulity. Defendants' failure to comply with applicable provisions of law has undoubtedly lengthened and multiplied these proceedings, and disregarding the efforts expended as a result of Defendants' failures is hardly justified. Likewise, Defendants' assertions that the adversary process has not been halted by these same actions is clearly contradicted by Defendants' continued refusal to provide even the preliminary discovery which it has repeatedly represented would be provided.

As indicated in previous filings, Plaintiff did not seek an entry of default until *after* Defendants failed to comply with their deadline to provide initial disclosures pursuant to Fed. R. Civ. P. 26(a)(1). *See* [Doc. 23] at 6-7. During the hearings on June 18 and July 30, 2014, Plaintiff again raised the issue of Defendants' failure to provide initial disclosures. After the July

30th hearing, defense counsel indicated to Plaintiff's counsel that Defendants would provide Plaintiff with the disclosures. On August 4, 2014, Plaintiff's counsel sent correspondence to counsel for Defendants inquiring about the status of same. *See* August 4 Correspondence, attached as Exhibit B. Despite counsel for Defendants' renewed assurance that the information would be provided, it never has been. Defendants' conclusory representation that their actions have not effectively halted the adversary process is belied by the actual course of proceedings in this case. As Defendants concede that "increased difficulties in discovery" form a valid basis for finding prejudice to Plaintiff, there can be no doubt that such prejudice is present here.

3. Defendants Have Failed Entirely to Show the Existence of a Meritorious Defense

Despite the Fifth Circuit's clear direction that courts are to consider whether "the defendant *has presented* a meritorious defense," *see In re Chinese-Manufactured Drywall*, 742 F.3d at 594 (emphasis supplied), Defendants cleverly attempt to have the Court determine that setting aside a default judgment is warranted where a meritorious defense is merely *possible.* Again, presenting no new evidence or argument which has not been previously considered by this Court, Defendants utterly fail in their attempt to meet their burden.

a. Qualified Immunity

In their Motion, Defendants re-assert the argument that since certain defendants "may have" a "potential defense of qualified immunity," they have met the requirement of establishing the existence of a meritorious defense. In so doing, they once more ignore statements by this Court rejecting precisely the same argument. Specifically, in its August 25th Order, the Court stated:

> Whether Defendants are entitled to qualified immunity, as urged by Defendants in their memorandum in opposition to the instant motion, is more appropriately

> argued in a Rule 12 motion, and is irrelevant to the resolution of the instant motion.

[Doc. 69] at 5, n.12. Defendants make no attempt to explain why their asserted defense of qualified immunity should now be considered relevant, when the Court has already determined it is not.

With flagrant disregard for the Court's determination that the issue of qualified immunity was irrelevant to the entry of default judgment, Defendants next embark on dizzyingly obtuse discussion of issues surrounding qualified immunity which clearly have no bearing on the issues currently before the Court. For instance, Defendants begin their discussion of qualified immunity by addressing the amendment of the Louisiana Constitution which occurred in 2013, presumably to support an argument that the rights Defendants violated were not "clearly established at the time of the challenged conduct." *See* [Doc. 74-4] at 7. In doing so, Defendants ignore the fact – explicitly stated by the Court in its August 25th Order – that default judgment was entered only with respect to Plaintiff's Second Amendment claims, and not Plaintiff's claims arising under Article I, §11 of the Louisiana Constitution. *See* [Doc. 69] at 10, n. 16 ("because the Court concludes that Taylor has alleged a viable claim under the Second Amendment, the Court need not analyze the viability of Taylor's claim under Article I, §11 of the Louisiana Constitution").

As Plaintiff has detailed in other filings with the Court, in 1850, the Louisiana Supreme Court determined that the Second Amendment to the United States Constitution guarantees to citizens the right to carry arms openly. *See State v. Chandler,* 5 La. Ann. 489, 490 (La. 1850). In rejecting a constitutional challenge to a law forbidding the possession of concealed weapons, the *Chandler* Court stated:

> This law became absolutely necessary to counteract a vicious state of society, growing out of the habit of carrying concealed weapons, and to prevent bloodshed and assassinations upon unsuspecting persons. ***It interfered with no man's right to carry arms (to use its words) "in full open view," which places men upon an equality***. ***This is the right guaranteed by the Constitution of the United States,*** and which is calculated to incite men to a manly and noble defence of themselves, if necessary, and of their country, without any tendency to secret advantages and unmanly assassinations.

Id.; see also, District of Columbia v. Heller, 554 U.S. 570, 613 (U.S. 2008) (citing favorably to *Chandler*). Defendants have offered nothing to justify a finding that the contours of the Second Amendment, announced by the Louisiana Supreme Court more than 150 years ago, was not a "clearly established right" at the time of Plaintiff's arrest in 2012.

Defendants go on to address provisions of law which clearly have no place in the issues being determined by the Court. For instance, Defendants discuss the burden of proof to be applied when the defense of qualified immunity is raised by a defendant in its answer, a situation clearly not present here. *See* [Doc. 74-4] at 9. Defendants' brief also addresses the manner in which discovery should proceed when a defendant possesses a qualified immunity defense – a situation equally inapplicable to the present case. *Id.*

Defendants further argue that certain defendants have a defense to the claim that they made policy and/or that they are "policy makers," asserting that this defense is "tangible and significant, and, if established, may serve to completely absolve the defendants of any liability for the claims pled." *See id.* at 9-10. The problem with Defendants' argument is two-fold. Initially, Defendants provide absolutely no justification for the conclusory assertion that the identified defendants are not "policy makers," and the evidence in the record clearly contradicts such a finding. Specifically, as outlined in Plaintiff's Complaint, the Plan of Government for the City of Baton Rouge clearly delegates policy-making authority to the defendants at issue. *See*

[Doc. 1] at 8-9. Furthermore, the actions taken by certain Defendants in connection with this action clearly belies any assertion that these same defendants cannot be considered "policy makers." As stated by the Court in its August 25th Order:

> The viability of Taylor's Second Amendment claim is further underscored by undisputed evidence that members of the East Baton Rouge Parish Attorney's Office, including Defendant Roper, appeared before the Baton Rouge Metropolitan Council on June 25, 2014, and requested the Council repeal §13:95.3 because the ordinance is a "… mistake, and it should be corrected." It is also undisputed that on June 24, 2014, counsel with the East Baton Rouge Parish Attorney's Office drafted (and forwarded to counsel for Taylor) an e-mail to Baton Rouge Chief of Police, Carl Dabadie, Jr., suggesting Dabadie "no longer enforce Section 13:95.3" because "[t]he ordinance may have some constitutional problems."

[Doc. 69] at 14-15 (citations omitted). Given these undisputed facts, Defendants' baseless assertion that certain defendants should not be considered "policy makers" is entirely without basis.

Further, Defendants fail entirely to provide any support whatsoever for their assertion that any defendant would be "absolved of liability" upon a finding that he or she is not a "policy maker" for the City of Baton Rouge. As indicated by voluminous precedent, including that cited by Defendants in support of their Motion, the issue of whether or not an individual is a "policy maker" for a municipality is relevant only to the determination of whether a *municipality* may be held liable – not the actor himself. *See e.g. Carbalan v. Vaughn,* 958 F.2d 92, 93 (5th Cir. 1992) (explaining that while municipalities may not be held liable on a theory of *respondeat superior,* they may be liable "where the alleged unconstitutional activity is inflicted pursuant to official policy"). While there is no real dispute that the individuals identified in Defendants Motion are "policy makers" for the city of Baton Rouge, such status is not required in order to hold the City of Baton Rouge liable in connection with this case. This is due to the fact that the

unconstitutional activity at issue was specifically mandated by one of the City's ordinances. The "official policy" required in order to hold a municipality liable does not arise solely from the actions of its policy makers. To the contrary, the Fifth Circuit has defined "official policy" as:

> A policy statement, **ordinance**, regulation, or decision that is officially adopted and promulgated by the municipality's lawmaking officers or by an official to whom the lawmakers have delegated policy-making authority.

Carbalan, 958 F.2d at 94 (emphasis supplied). As Plaintiff's Second Amendment rights were violated as a result of the enforcement and prosecution of §13:95.3 of the Baton Rouge Code of Ordinances, it is irrelevant whether any defendant was a "policy maker" for the City for purposes of holding the municipality liable. As Defendants have failed to provide any argument regarding the import of a defendant's status as a "policy maker," they have again failed to establish the presence of a meritorious defense to Plaintiff's claims.

b. Constitutionality of §13:95.3

Arguably the most glaringly deficient portion of Defendants' Motion can be seen in its "arguments" regarding the constitutionality of §13:95.3. These arguments amount to no more than rank conjecture that "perhaps" Defendants "may" someday be able to muster sufficient facts enabling them to present the Court with "a memorandum with an analysis of the constitutional issues which this Court deems more thorough and compelling than it found the analysis offered in its previous filings to be." *See* [Doc. 74-4] at 10-11. While Defendants assert that the Court should vacate its default judgment because it rendered its decision regarding the constitutionality of §13:95.3 "without the benefit of all the evidence which may be developed at trial," it fails to acknowledge that the Court was forced to make its determination in this manner due to Defendants' failure to participate in this litigation. Furthermore, while asserting that facts regarding the existence or non-existence of probable cause in connection with Plaintiff's arrest,

Defendants fail to identify any such evidence, or why such evidence could not have been developed during the approximately 13 months that this suit has been pending.

Similarly, Defendants' assertion that vacating the default judgment is warranted because "an expert could be called or statistical evidence introduced to show that there are more arrests for assault and/or battery in establishments where alcohol is served than in other types of public establishments" suffers from many of the same flaws previously identified. Namely, Defendants' argument fails to take into consideration the previous findings of the Court, or to indicate how such hypothetically obtainable information would be relevant in connection with this suit. As stated by the Court in its August 25th Order:

> As written, the clear language of §13:95.3 prohibits the possession of firearms in any parking lot of an establishment that sells alcohol. Thus, any law abiding citizen who exercises his or her right to keep or bear arms within the confines of his or her personal vehicle will violate §13:05.3 anytime he or she, for example, stops to refuel a vehicle at a service station that sells alcohol, or stops to purchase groceries at a grocery store that sells alcohol. Indeed, Defendants concede in their memorandum that §13:95.3 "could be unconstitutional 'as applied' to a person within the parking lot of a grocery store." Similarly the ordinance prohibits law-abiding citizens from purchasing and possessing firearms at any establishment that sells alcohol, thereby rendering the sale of firearms at establishments like Wal-Mart a criminal act. Indeed, even Defendants concede that §13:95.3 impinges upon a right protected by the Second Amendment.

[Doc. 69] at 14. As the Court's finding of unconstitutionality was based, in part, upon the fact that §13:95.3 prohibits the possession of firearms in any parking lot of an establishment that ***sells*** alcohol, Defendants' imagined evidence – pertaining to establishments where alcohol is ***consumed,*** lacks any apparent relevance to the ordinance's constitutionality. Adding to the flaw in Defendants' argument is the fact, acknowledged by the Court in its Order, that Defendant has already conceded §13:95.3's unconstitutionality. Even *if* Defendants could come up with any of the evidence they dream possible, they have failed entirely to address the concessions previously

made, and upon which the Court's determination is based. Once more the argument advanced by Defendants is entirely spurious.

4. The Other Factors Cited by Defendants Do Not Justify Vacating the Default Judgment

After failing to establish any justification for the Court to vacate the default judgment entered on August 25th under the primary factors identified in the jurisprudence, Defendants finally resort to asserting that vacation of the default judgment is warranted when considering secondary factors. For instance, Defendants assert that justice requires that the default judgment be vacated because Plaintiff's petition "contains allegations which are simply untrue." [Doc. 74-4] at 11. Even assuming that such a finding would entitle Defendants to have the default judgment vacated, Defendants have come forth with no evidence or argument that would substantiate this assertion in any way. Defendants have made absolutely no effort to develop the facts of this case through discovery, and having foreclosed Plaintiff's ability to support its allegations in the normal course of litigation, now seek to attack the veracity of those allegations with nothing more than bald assertions that the facts are untrue. Such tactics are inappropriate at any stage of a lawsuit, but particularly so in situations such as the one presented here. Furthermore, as addressed below, Defendants do not indicate why the allegations they (incorrectly) claim to be false – whether certain defendants are "policy makers" - would merit vacating the default judgment.

Defendants next assert that vacating the default judgment is in the public interest because "the public has a right to know the accuracy of the allegations against its public officials." [Doc. 74-4] at 12. The argument presented is so thin, that were it to turn sideways, it would disappear. The only factual allegation with which Defendants' take issue is that certain Defendants are

alleged to be "policy makers" for the City of Baton Rouge. Aside from the fact that there exists ample support for these allegations in the record, Defendant offers no explanation for why a defendant's legal status as a "policy maker" would have any impact on the public interest. The glaring error in Defendants' argument is that the public undoubtedly has an interest in preventing individuals acting under the color of state law from depriving them of their constitutionally-protected civil liberties. This Court has already found that §13:95.3 permits just such a deprivation of rights, yet Defendants fail even to acknowledge that the public interest *could* be served by prohibiting further utilization of the ordinance. Given the lack of any argument or evidence which would support a finding of constitutionality with respect to §13:95.3, along with Defendants' acknowledgment that the ordinance can be applied in an unconstitutional manner, the argument that permitting continued enforcement of §13:95.3 would serve the punlic interest obliterates any credibility which may have survived Defendants' other specious arguments.

In its final argument, Defendant asserts that the public interest supports vacation of the Court's default judgment because "any judgment against the defendants will be paid from the public fisc." [Doc. 74-4] at 12. Yet again, Defendant provides no justification whatsoever for its assertion. The Court's default judgment renders judgment against ALL defendants, not just the City of Baton Rouge, and Defendants' assertion that "any judgment" will be paid from public funds finds absolutely no support in the record before this Court. As with every other argument advanced by Defendant in their Motion, this argument is entirely devoid of merit.

C. The Court Should Set Aside Default On Plaintiff's Claims for which Default Judgment Has Not Yet Been Entered and Allow Discovery to Proceed

As set forth above, the arguments appearing in Defendants' Motion are grossly inadequate to justify vacation of the default judgment granted to Plaintiff on his Second

Amendment claims. Under the current procedural posture, Plaintiff's claims that were not addressed in the Court's August 25th Order are still in "default" status, and remain for resolution. While Defendants' Motion does not establish that the default should be set aside on these claims (albeit providing the appropriate legal standard for such an analysis), Plaintiff also desires that the default currently in place be set aside. Plaintiff's desire to set aside the default on these claims arises from the fact that, as a result of Defendants' actions, Plaintiff has been precluded from performing any discovery, thus hampering his ability to substantiate an entitlement to certain claims or damages – most significantly punitive damages.

Setting aside the default on Plaintiff's non-Second Amendment claims would permit the parties to effectively begin anew on the remaining claims, including the ability of Defendants to assert any applicable defenses they may have. As Defendants' Motion is directed only at setting aside the default, and does not even address the entry of default judgment on Plaintiff's Second Amendment claims, Plaintiff respectfully asserts that setting aside the clerk's entry of default with respect to Plaintiff's claims under 42 U.S.C. §1983, the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution, and under provisions of Louisiana law is appropriate. Plaintiff also reiterates his desire for a status conference with the Court so that the parties can better inform themselves about the most effective manner in which to proceed to resolution of all claims at issue in this litigation.

IV. Conclusion

To the extent that the Court construes Defendants' Motion to Set Aside Default to apply to Plaintiff's Second Amendment claims, Plaintiff respectfully requests that the motion be denied. To the extent that the Court construes Defendants' Motion to apply to Plaintiff's claims

upon which a default judgment has not already been issued, Plaintiff respectfully requests that the Court set aside the Clerk's entry of default so that the parties may engage in discovery and litigate the merits of these claims.

Respectfully submitted,

s/ Terrence J. Donahue, Jr.
Christopher D. Glisson #20200
Terrence J. Donahue, Jr. #32126
McGlynn, Glisson, & Mouton
340 Florida Street
Baton Rouge, Louisiana 70801
(225) 344-3555

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice has been served on all counsel of record through a Notice of Electronic Filing generated by the Court's CM/ECF system, including those listed below, on this, the 9th day of October, 2014.

Tedrick Knightshead
Gwendolyn K. Brown
Office of the Parish Attorney
East Baton Rouge Parish
222 Saint Louis Street, Room 902
Baton Rouge, LA 70821

s/ Terrence J. Donahue, Jr.
Terrence J. Donahue, Jr.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

ERNEST TAYLOR	:	
	:	**CIVIL ACTION NUMBER:**
VERSUS	:	
	:	**3:13-CV-00579 -BAJ-RLB**
CITY OF BATON ROUGE, ET AL	:	
	:	**HON. CHIEF BRIAN A. JACKSON**
	:	
	:	**JUNE 18, 2014**

TRANSCRIPT OF MOTION HEARING

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A P P E A R A N C E S:

FOR THE PLAINTIFF, ERNEST TAYLOR:
TERRANCE J. DONAHUE, ESQ.
CHRISTOPHER GLISSON, ESQ.

FOR CITY OF BATON ROUGE:
TEDRICK KNIGHTSHEAD, ESQ.

REPORTED BY: CLARE SMITH-NEELY, CCR

UNITED STATES COURTHOUSE
777 FLORIDA STREET
BATON ROUGE, LOUISIANA 70801 (225) 389-3565

ENTRY OF DEFAULT I WILL NOTE AND SPECIFICALLY FIND THAT DEFENDANTS HAVE FAILED TO STATE WHY THE MATTER WAS NOT ASSIGNED TO NEW COUNSEL. THE DEFENDANTS HAVE NOT PROVIDED SATISFACTORY EXPLANATION TO WHY THIS MATTER, FOR SUCH A PROLONGED PERIOD OF TIME, WENT COMPLETELY UNADDRESSED BY THE CITY ATTORNEY'S OFFICE, ESPECIALLY IN VIEW OF THE INFORMATION BY PLAINTIFF'S COUNSEL THAT THERE WAS SEVERAL EFFORTS MADE TO CONTACT THE CITY ATTORNEY ASSIGNED TO THE CASE AND TO ENGAGE IN SOME DISCUSSIONS OR NEGOTIATIONS OF THE CASE. SO, I WILL SPECIFICALLY FIND THAT THERE HAS BEEN A FAILURE TO PROVIDE ANY FACTS OR EVIDENCE THAT ESTABLISH GOOD CAUSE FOR THE FAILURE TO FILE THE TIMELY ANSWER.

NOW, SPECIFICALLY, IN DETERMINING WHETHER THERE IS A GOOD CAUSE AS REQUIRED BY THE RULE 55C, THE COURT MUST CONSIDER THREE FACTORS. FIRST, WHETHER THE DEFAULT WAS WILLFUL AND, AGAIN, WHETHER SETTING ASIDE THE DEFAULT JUDGEMENT WOULD PREJUDICE THE PLAINTIFF, AND THIRD WHETHER THE DEFENDANT HAS PRESENTED A MERITORIOUS DEFENSE, WHERE DEFENDANT'S NEGLECT IS AT LEAST A PARTIAL CAUSE OF THE

FAILURE TO RESPOND, THE DEFENDANT HAS THE BURDEN TO CONVINCE THE COURT THAT IT'S NEGLECT WAS EXCUSABLE RATHER THAN WILLFUL. AND THE STANDARD FOR THAT IS A PREPONDERANCE OF THE EVIDENCE.

HERE, AGAIN, THE DEFENDANTS HAVE FAILED TO ESTABLISH BY PREPONDERANCE OF THE EVIDENCE THAT THE NEGLECT WAS NOT WILLFUL.

AGAIN, MR. HILBURN DIDN'T LEAVE THE CITY/ PARISH ATTORNEY'S OFFICE UNTIL MARCH OF 2014. HE KNEW WHEN HE FILED THE WAIVER OF SERVICE THAT HE WAS OBLIGATED TO FILE SOME ANSWER OR DISPOSITIVE MOTION BY NOVEMBER. AND, YET, AGAIN, THE CITY ATTORNEY'S OFFICE HAS FAILED, AS OF THIS TIME, TO PRESENT THE COURT WITH A REASONABLE -- ANY EVIDENCE OR ANY REASONS, IN FACT, THAT WOULD ESTABLISH THE EXCUSABLE NEGLECT.

SO, I CONCLUDE THAT IT IS -- THE FAILURE TO FILE WAS DUE TO INEXCUSABLE NEGLECT. ACCORDINGLY, THE DEFENDANT'S MOTION UNDER RULE 55C, TO SET ASIDE THE CLERK'S ENTRY OF DEFAULT IS DENIED.

LET ME MOVE ON NOW TO PLAINTIFF'S MOTION TO STRIKE THE ANSWER, WHICH KIND OF GOES HAND

Joe Donahue

From: Tedrick Knightshead <TKnightshead@brgov.com>
Sent: Monday, August 04, 2014 11:57 AM
To: Joe Donahue
Cc: Christy Duke
Subject: RE: Ernest TAylor v. City of Baton Rouge

I'm working on it as week speak. Trying to get the officer to identify the parties. I will supply their names.

From: Joe Donahue [mailto:joe@mcglynnglisson.com]
Sent: Monday, August 04, 2014 11:55 AM
To: Tedrick Knightshead
Subject: Ernest TAylor v. City of Baton Rouge

Tedrick,

Any progress with the initial disclosures?

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