

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

**VERONICA WILLIAMS,**

Plaintiff,

v.

**LITTON LOAN SERVICING, et al.,**

Defendants

Civil Action Number:

2:16-cv-05301-ES-JAD

**DEFENDANT STERN & EISENBERG, P.C.’S MEMORANDUM IN OPPOSITION TO  
PLAINTIFF’S MOTION FOR DEFAULT JUDGMENT AGAINST DEFENDANTS**

Defendant Stern & Eisenberg, P.C. files this Opposition to Plaintiff’s Motion for Default Judgment against Defendants and in support thereof avers, as follows:

***Background***

Plaintiff Veronica A. Williams commenced this action on August 25, 2016 against the law firm of Stern & Eisenberg, P.C., (“**S&E**”), as well as Litton Loan Servicing, HSBC Bank USA, N.A., Goldman Sachs, Fremont Home Loan Trust 2006-C Mortgage-Backed Certificates, Series 2006-C, and Ocwen. S&E was served with a Summons and Complaint on November 4, 2016. Although the Complaint referenced Exhibits “A” through “J”, they were neither served contemporaneous with the Complaint, nor available on Pacer [despite efforts of the Clerk of Court to locate them], which frustrated S&E’s intention to file a motion to dismiss. As a practical matter, the disposition of a motion dismiss, or generally proceeding otherwise in the case, requires a complete record.

Therefore, after counsel for S&E entered his appearance, it requested, and was granted, extensions of time to respond to the Complaint on the grounds that it is prejudiced and cannot reasonably do so absent the exhibits referenced in the Complaint. *See* Pacer Docket entry ##'s 6, 9, 11, 13, 14. S&E is required to file a response to the Complaint by January 22, 2017.<sup>1</sup> *Id.*; *see* Pacer Docket entry #14. Indeed, by order of court, S&E is not yet required to file a responsive pleading. As a factual and legal matter, default is precluded and inappropriate.

***Plaintiff is Not Entitled to a Default Judgment***

Obtaining a default judgment is a two-step process under Federal Rule of Civil Procedure 55. *Surgick v. Cirella*, 2010 U.S. Dist. LEXIS 59454, \*30 (D.N.J. June 15, 2010) (denying motion for default judgment where parties timely responded to complaint). “First, when a defendant has failed to plead or otherwise respond, a plaintiff may request the entry of default by the Clerk of the Court.” *Id.* “Second, after the Clerk has entered the party’s default, a plaintiff may then obtain a judgment by default by either (1) asking the Clerk to enter judgment, if the judgment is a sum certain, or (2) applying to the Court.” *Id.* (*citing* Fed.R.Civ.P. 55(b). “However, notwithstanding a plaintiff’s compliance with the Rule, ‘entry of a default judgment is left primarily to the discretion of the district court.’” *Id.* (*quoting Hritz v. Woma Corp.*, 732 F.2d 1178, 1180 (3d Cir. 1984)). “[T]he party making the request is not entitled to a default judgment as of right.” *Id.*

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<sup>1</sup> To this end, S&E filed a Motion for Plaintiff to Lodge and Serve Exhibits to Complaint, which remains pending for disposition. *See* Pacer Document #16. On or about December 21, 2016, Plaintiff served S&E with a set of Exhibits “A” through “J”, which correspond to each of the exhibits referenced in the Complaint. Consequently, the Motion is moot. S&E will file a formal withdrawal of its Motion for Plaintiff to Lodge and Serve Exhibits to Complaint, Pacer Document #16.

In this case, not only has Plaintiff failed to employ the appropriate procedural mechanism to request default, and nonetheless, default would be inappropriate. S&E has appeared in the case through counsel and has appropriately and timely requested, and has been granted, extensions of time to file a response to the Complaint through January 22, 2017. *See* Pacer Docket entry #14. Plaintiff's motion should be denied.

STERN & EISENBERG, PC

/s/ Evan Barenbaum

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**CERTIFICATION OF SERVICE**

I, Evan Barenbaum, Esquire, on this 6<sup>th</sup> day of January 2017, being duly sworn according to law, depose and say that a true and correct copy of the Opposition to Motion for Default Judgment was served upon all parties via ECF, and as indicated below:

*Via First-Class Mail*  
Veronica A. Williams  
P.O. Box 978  
South Orange, NJ 07079-0978

STERN & EISENBERG, PC

BY: /s/Evan Barenbaum  
Evan Barenbaum, Esquire  
*Attorney for Defendant*