

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

GUN OWNERS OF AMERICA, INC.,
GUN OWNERS FOUNDATION, and
RICHARD HUGHES,

Plaintiffs,

CASE NO.: 2:24-cv-14250-JEM
DIVISION:

v.

SHERIFF KEITH PEARSON, in his
official capacity as Sheriff of St. Lucie
County, the ST. LUCIE COUNTY
SHERIFF'S OFFICE, THOMAS
BAKKEDAHL, in his official capacity as
the State Attorney for the 19th Judicial
Circuit of Florida, and the STATE
ATTORNEY'S OFFICE for the 19th
Judicial Circuit of Florida,

Defendants.

MOTION TO VACATE CLERK'S DEFAULT

COMES NOW, Defendants, THOMAS BAKKEDAHL, in his official capacity as the State Attorney for the 19th Judicial Circuit of Florida, and the STATE ATTORNEY'S OFFICE for the 19th Judicial Circuit of Florida, by and through the undersigned counsel, move the Court to vacate the Clerk's Default entered on September 6, 2024 in the above captioned matter and in support thereof, states as follows:

1. Plaintiffs served upon THOMAS BAKKEDAHL, in his official capacity as the State Attorney for the 19th Judicial Circuit of Florida, and the STATE ATTORNEY'S OFFICE for the 19th Judicial Circuit of Florida, Plaintiffs' Complaint for Declaratory and Injunctive Relief on August 9, 2024.

2. Shortly thereafter service upon Defendants THOMAS BAKKEDAHL, in his official capacity as the State Attorney for the 19th Judicial Circuit of Florida, and the STATE ATTORNEY'S OFFICE for the 19th Judicial Circuit of Florida, the Parties agreed to an extension of time for Defendants, THOMAS BAKKEDAHL, in his official capacity as the State Attorney for the 19th Judicial Circuit of Florida, and the STATE ATTORNEY'S OFFICE for the 19th Judicial Circuit of Florida to respond to the Plaintiffs' Complaint for Declaratory and Injunctive Relief to and through September 18, 2024.

3. On September 4, 2024, Counsel for Defendants, THOMAS BAKKEDAHL, in his official capacity as the State Attorney for the 19th Judicial Circuit of Florida, and the STATE ATTORNEY'S OFFICE for the 19th Judicial Circuit of Florida, provided Counsel for Plaintiffs a proposed Consent Motion for Extension of Time for review and execution which was subsequently executed by both Counsel on September 5, 2024.

4. On September 6, 2024, upon the Court's own order, the Clerk entered a Clerk's Default against Defendants THOMAS BAKKEDAHL, in his official capacity as the State Attorney for the 19th Judicial Circuit of Florida, and the STATE ATTORNEY'S OFFICE for the 19th Judicial Circuit of Florida.

5. Due to excusable neglect, the executed Consent Motion for Extension of Time was not filed until September 9, 2024.

6. Pursuant to Federal Rules of Civil Procedure, Rule 55(c):

SETTING ASIDE A DEFAULT OR A DEFAULT JUDGMENT. The court may set aside an entry of default for good cause, and it may set aside a final default judgment under Rule 60(b).

7. Federal Rules of Civil Procedure, Rule 60(b) provides:

(b) GROUNDS FOR RELIEF FROM A FINAL JUDGMENT, ORDER, OR

PROCEEDING. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

8. Moreover, within this Court's Order Directing Clerk to Enter Default, the Court specifically provided that the Clerk's Default and administrative closure of the case "shall not affect the substantive rights of the parties." Defendants THOMAS BAKKEDAHL, in his official capacity as the State Attorney for the 19th Judicial Circuit of Florida, and the STATE ATTORNEY'S OFFICE for the 19th Judicial Circuit of Florida intend to file a substantive pleading by the agreed deadline of September 18, 2024 and have not waived their rights to file such response.

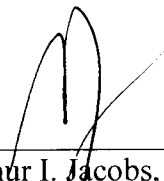
9. Based on the foregoing, Counsel for Defendants THOMAS BAKKEDAHL, in his official capacity as the State Attorney for the 19th Judicial Circuit of Florida, and the STATE ATTORNEY'S OFFICE for the 19th Judicial Circuit of Florida respectfully requests this Honorable Court vacate the Clerk's Default, reopen the case, grant the Consent Motion for Extension of Time filed on September 9, 2024, and grant any other relief deemed just and proper.

10. Counsel for Defendants THOMAS BAKKEDAHL, in his official capacity as the State Attorney for the 19th Judicial Circuit of Florida, and the STATE ATTORNEY'S OFFICE for the 19th Judicial Circuit of Florida have consulted with Counsel for Plaintiffs and Plaintiffs do not oppose this motion and defer to the Court.

WHEREFORE, Defendants, THOMAS BAKKEDAHL, in his official capacity as the State Attorney for the 19th Judicial Circuit of Florida, and the STATE ATTORNEY'S OFFICE for the 19th Judicial Circuit of Florida, respectfully request the Court I) grant the instant Motion; II) vacate the Clerk's Default; III) reopen the case; IV) grant the Consent Motion for Extension of Time filed on September 9, 2024; and V) grant any other relief deemed just and proper.

Respectfully Submitted,

JACOBS SCHOLZ & WYLER, LLC



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of September, 2024, a copy of the foregoing Motion to Vacate Clerk's Default has been electronically filed with CM/ECF for e-service on all parties of record.

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/s/ Arthur I. Jacobs

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