

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
CIVIL DIVISION

FILED BY *KP* D.C.

FEB 12 2026

ANGELA E. NOBLE  
CLERK U.S. DIST. CT.  
S. D. OF FLA. - MIAMI

CASE NO.: 25-cv-21417-BLOOM/Elfenbein

KEVIN O'LEARY,

Plaintiffs

v.

BENJAMIN ARMSTRONG,

Defendants

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**AFFIDAVIT OF TIMOTHY SMITHWICK**

I, Timothy Smithwick, being duly sworn, depose and state as follows:

1. My name is Timothy Smithwick. I am over the age of 18, competent to testify, and make this affidavit based on my personal knowledge.
2. I am the uncle of Benjamin Armstrong, the Defendant in the above-captioned matter.
3. I have been assisting Benjamin Armstrong with legal and administrative matters, including responding to documents related to this case, due to his mental incompetence.
4. Benjamin Armstrong has been diagnosed with severe mental health conditions, including Bipolar Disorder, Narcissistic Personality Disorder, Dissociative Identity Disorder, Cotard's Syndrome, and Capgras Delusion, as documented by medical professionals.

5. These conditions significantly impair Benjamin's ability to understand and participate in legal proceedings. For example, Benjamin has expressed delusional beliefs, such as thinking he is dead and that people around him are imposters.
6. On December 19, 2025, Benjamin informed his psychiatrist, Dr. Diana Woodall, that he believes he is dead and in a waiting room for Hell, which further demonstrates his inability to comprehend reality or legal matters.
7. Due to the severity of his mental health conditions, Benjamin's physician has certified that he requires placement in a 24-hour residential treatment program for continuous monitoring and care.
8. I have been assisting Benjamin with responding to legal documents and proceedings because he is unable to do so on his own. His mental state prevents him from understanding the nature and consequences of these proceedings.
9. I intend to seek legal guardianship of Benjamin Armstrong to ensure that his interests are adequately represented and protected in this matter.
10. I affirm that my assistance to Benjamin Armstrong has been provided in good faith and solely for the purpose of helping him navigate these legal proceedings, given his mental incompetence.
11. I make this affidavit in support of the motion to set aside the default judgment entered against Benjamin Armstrong, as his mental incompetence constitutes good cause under the Federal Rules of Civil Procedure and the standards of the Eleventh Circuit.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.

Dated this 10th day of February, 2026.

Timothy James Smithwick

Timothy Smithwick

State of Florida

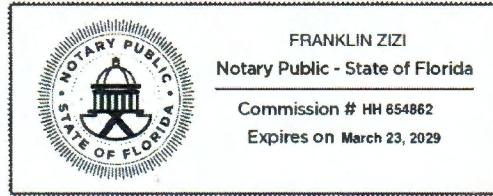
County of Orange

Sworn to and subscribed before me this 10th day of February, 2026.



Franklin Zizi  
Notary Public

My Commission Expires: 03/23/2029



Notarized remotely online using communication technology via Proof.

Respectfully submitted,

Benjamin Armstrong  
/s/ Benjamin Armstrong

**CERTIFICATE OF SERVICE**

I hereby certify that on February 10th 2026, I electronically or by mail filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that this document is being served this day on Plaintiffs via U.S. mail at the following address:

Jeffrey A. Neiman, Esq.

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Brandon S. Floch, Esq.

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Benjamin Armstrong  
/s/ Benjamin Armstrong