

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION**

**NATIONWIDE MUTUAL
INSURANCE COMPANY**

PLAINTIFF

v.

CASE NO. 3:15CV00041 BSM

AUSTIN AQUINO et al.

DEFENDANTS

ORDER

On October 9, 2015, plaintiff Nationwide Mutual Insurance Company filed a motion for clerk's entry of default judgment against defendants Sue Garrison, Al Aquino, and Austin Aquino. *See* Doc. No. 18. Nationwide subsequently filed a motion to withdraw its motion for entry of default against Garrison, and Al Aquino filed an unopposed motion to set aside entry of default against him. *See* Doc. Nos. 22, 23. Nationwide's motion to withdraw [Doc. No. 22] and Al Aquino's unopposed motion to set aside [Doc. No. 23] are granted. Accordingly, Nationwide's motion for entry of default [Doc. No. 18] is denied as moot as against these two defendants.

Nationwide's motion for entry of default judgment is also denied against defendant Austin Aquino because an entry of default judgment against him, while Al Aquino still has a chance to succeed on the merits, creates the risk of an inconsistent judgment. *U.S. ex rel. Costner v. United States*, 56 F. App'x 287, 288 (8th Cir. 2003) (holding that a logically inconsistent judgment results if a verdict is entered in favor of one defendant when the other similarly situated defendant suffers a default judgment in the same case).

IT IS THEREFORE ORDERED that:

1. Nationwide's motion to withdraw [Doc. No. 22] is granted;
2. Al Aquino's motion to set aside clerk's entry of default judgment [Doc. No. 23] is granted; and,
3. Nationwide's motion for clerk's entry of default judgment [Doc. No. 18] is denied.

IT IS SO ORDERED this 19th day of October 2015.



UNITED STATES DISTRICT JUDGE