

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
OCALA DIVISION**

**JAMES W. ATKINS, et al.,**

**Plaintiffs,**

v.

**Case No: 5:14-cv-593-Oc-32PRL**

**NEAL S. SMALBACH, et al.,**

**Defendants.**

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**ORDER**

Plaintiffs have the filed the instant motion for clerk's default against Defendant, Mick & Associates ("Mick"). (Doc. 17). Mick acknowledges that it failed to timely answer the complaint but argues that the Court should excuse this inadvertent delay and allow Mick to now file its response to the Second Amended Complaint. (Docs. 18 & 19).

Pursuant to Rule 55(a), Fed.R.Civ.P, "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default." While Mick has failed to timely answer the Second Amended Complaint, it cannot be said that it has not "otherwise defend[ed]" this action. Indeed, after removing Plaintiffs' Second Amended Complaint, Mick has actively defended against Plaintiffs' motion to remand (*see* Docs. 7, 9, 11, 15) and promptly responded to the instant motion.

Accordingly, and in accordance with the judicial preference for a decision on the merits, Plaintiffs' motion for clerk's default (Doc. 17) is due to be **DENIED**. Mick's motion for enlargement of time to respond to Plaintiffs' Second Amended Complaint (Doc. 19) is

**GRANTED.** Mick shall file and serve its response to Plaintiffs' Second Amended Complaint on or before **February 24, 2015.**

**DONE and ORDERED** in Ocala, Florida on February 23, 2015.



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PHILIP R. LAMMENS  
United States Magistrate Judge

Copies furnished to:

Counsel of Record  
Unrepresented Parties