

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

CASE NO: 1:10-cv-21951 Ungaro/Simonton

**Jesús Cabrera Jaramillo, in his individual
capacity, and in his capacity as the personal
representative of the estate of Alma Rosa
Jaramillo,**

**Jane Doe, in her individual capacity, and in her
capacity as the personal representative of the
estate of Eduardo Estrada, and**

John Doe, in his individual capacity,

Plaintiffs,

v.

**CARLOS MARIO JIMÉNEZ NARANJO, also
known as “Macaco,” “El Agricultor,” “Lorenzo
González Quinchía,” and “Javier Montañez,”**

Defendant.

PLAINTIFFS’ REQUEST FOR ENTRY OF DEFAULT

**TO THE CLERK OF THE COURT FOR THE UNITED STATES COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA:**

NOW COME Plaintiffs Jesús Cabrera Jaramillo, Jane Doe, and John Doe (collectively “Plaintiffs”) and hereby request that the Clerk enter a default against defendant Carlos Mario Jiménez Naranjo (“Defendant”) in the above-captioned matter, pursuant to Federal Rule of Civil Procedure (“FRCP”) 55(a).¹

I. THE CLERK SHOULD ENTER DEFAULT AGAINST DEFENDANT

1. On June 14, 2010, Plaintiffs filed a Complaint against Defendant for extrajudicial killing; torture; cruel, inhuman, or degrading treatment or punishment; war crimes; and crimes

¹ Plaintiffs are moving for entry of default on the docket of this case under FRCP 55(a), not a default judgment by the Clerk or Court under FRCP 55(b)(1) or (2).

against humanity. *See* Docket Entry No. 1. Plaintiffs alleged that Defendant was one of the top leaders of the United Self-Defense Forces of Colombia (“AUC”) and headed an AUC sub-division, Bloque Central Bolivar (“BCB”), which acted in the Middle Magdalena river region of northwest Colombia. The Complaint alleged that the AUC was responsible for murdering, torturing and forcibly displacing thousands of Colombian civilians and that, on June 28, 2001 and July 16, 2001, paramilitaries belonging to the BCB who acted under the direction and control of Defendant, brutally murdered Plaintiffs’ family members and loved ones, Eduardo Estrada Gutierrez and Alma Rosa Jaramillo Lafourie. Plaintiffs seek both compensatory and punitive damages, as well as costs of suit and any further relief as this Court may deem just and proper.

2. On July 8, 2010, the Clerk of the Court issued an (amended) summons (the “Summons”) in Defendant’s name. *See* Docket Entry No. 11.

3. On July 13, 2010, the Complaint, Summons, and a Civil Cover Sheet were served on Defendant by process server. *See* Docket Entry No. 19. Defendant’s Answer or other response to the Complaint was due within twenty-one (21) days after service of the Complaint and Summons pursuant to FRCP 12(a)(1)(A).

4. On July 22, 2010, Defendant made an appearance through temporary counsel who requested this Court provide him time to obtain a license from the United States Department of Treasury’s Office of Foreign Assets Control (“OFAC”) permitting representation of Defendant, as a designated terrorist, in this lawsuit. *See* Docket Entry No. 17. On July 29, 2010, this Court granted Defendant’s motion and extended Defendant’s time to respond to the Complaint to September 23, 2010. *See* Docket Entry No. 21.

5. On September 19, 2010, Defendant’s temporary counsel informed the Court that his application to OFAC was still pending and that OFAC has informed him the application process generally takes 90 days or longer and that no legal services can be provided to Defendant without OFAC’s approval. *See* Docket Entry No. 28.

6. On September 22, 2010, the parties filed a stipulation extending time for Defendant to file a responsive pleading and to abate the order setting the initial planning and scheduling conference to allow Defendant's temporary counsel time to obtain a license from OFAC. *See* Docket Entry No. 29.

7. On October 4, 2010, the Court administratively closed this case to permit Defendant's former counsel additional time to obtain a license from OFAC to represent Defendant. *See* Docket Entry No. 31.

8. On February 7, 2011, Defendant's former counsel withdrew from his representation of Defendant because his OFAC license had not yet been granted (then six months after submitting the license application) and because Defendant had represented that, even if an OFAC license was received, Defendant could not pay for his representation. *See* Docket Entry No. 33. Defendant, therefore, is currently *pro se*.

9. On April 20, 2011, the Court issued an order setting a status conference for June 17, 2011. *See* Docket Entry No. 36.

10. On June 10, 2011, Plaintiffs requested a continuance of the June 17, 2011 status conference to allow clarification by the Court of the time Defendant was required to answer so the Court could ascertain whether Defendant will be defending this lawsuit. *See* Docket Entry No. 42.

11. On June 13, 2011, the Court administratively reopened this case and required Defendant to file an Answer to the Complaint by June 24, 2011. *See* Docket Entry No. 44.

12. As of the date of the filing of this Request for Entry of Default (one week after the date by which Defendant was ordered to have Answered), Defendant has failed to file an Answer or otherwise respond to the Complaint. Although Defendant's former temporary counsel appeared in this case on July 22, 2010, Defendant has made no appearance, nor has he contacted Plaintiffs' lawyers, since his former counsel's withdrawal on February 7, 2011.

13. Accordingly, because no Answer or other response has been filed within the time prescribed by the Federal Rules of Civil Procedure or the Court's order of June 13, 2011, Plaintiffs request the Clerk enter default against Defendant on this docket.

14. The above-stated facts are set forth in the accompanying declaration of Nema Milaninia, filed concurrently herewith.

II. ANTICIPATED NEXT STEPS TO THE CONCLUSION OF THIS LAWSUIT

15. With the Clerk's entry of default and Defendant's failure to Answer or otherwise defend this case, Plaintiffs anticipate they will assert they are entitled to a default judgment.

16. Inasmuch as Plaintiffs' claims are not for a sum certain Plaintiffs cannot seek entry of judgment by the clerk pursuant to FRCP 55(b)(1). Where, as here, the claim is for a sum that is not certain or cannot be made certain by computation, FRCP 55(b)(2) requires that Plaintiffs apply to the court to obtain a default judgment.

17. Pursuant to FRCP 55(b)(2), the Court can conduct hearings – preserving any federal statutory right to a jury trial – where, as here, the Court needs to determine the amount of damages. FED. R. CIV. P. 55(b)(2)(B).

18. This Circuit has, in fact, specifically held that an evidentiary hearing is appropriate in all but those “limited circumstances” where the evidence on record is sufficient to establish the amount of damages and prejudgment interest. *SEC v. Smyth*, 420 F.3d 1225, 1232 n.13 (11th Cir. 2005). Courts in this district have also held that an evidentiary hearing is required where the claim is for an unliquidated amount, such as tort claims, or for punitive damages. *See Crowley Liner Services, Inc. v. Transtainer Corp.*, No. 06-21995-CIV, 2007 WL 1526955, at *1 (S.D. Fla. May 24, 2007) (“A judgment by default may not be entered without a hearing on damages unless . . . the amount claimed is liquidated or capable of ascertainment from definite figures contained in the documentary evidence or in detailed affidavits”) *quoting Dundee Cement Co. v. Howard Pipe & Concrete Products, Inc.*, 722 F.2d 1319, 1323 (7th Cir. 1983). Indeed, in cases involving extraordinary claims of gross human rights abuse under the

Alien Tort Statute or Torture Victims Protection Act, courts, including one in this district, have ordered a jury trial following an entry of default. *See Lizarbe, et al. v. Hurtado*, Case No. 1:07-cv-21783, Docket Entry No. 15 (S.D. Fla. Nov. 21, 2007); *Jane Doe I, et al. v. Karadzic, et al.*, Case No. 1:1993-cv-00878 (S.D.N.Y. 1993).

19. Here, should Plaintiffs file an application for default judgment, they will request an evidentiary hearing pursuant to Rule 55(b)(2). Plaintiffs will likely need between 5 to 7 court days to present evidence to prove the amount of damages to which they are entitled. It is anticipated Plaintiffs will present percipient and expert witnesses and various documents addressing the nature and severity of Plaintiffs' harm which they suffered at the direction of the Defendant.

Dated: June 30, 2011

Respectfully Submitted,

/s/ Julie C. Ferguson

Julie C. Ferguson, Florida State Bar #93858
JULIE C. FERGUSON PA
200 South Biscayne Blvd.
Suite 3150
Miami, FL 33131
Telephone: (305) 358-0155
Facsimile: (305) 358-0133
Email: julie@jcfimmigration.com

Leo P. Cunningham (admitted *pro hac vice*)
Lee-Anne Mulholland (admitted *pro hac vice*)
Nema Milaninia (admitted *pro hac vice*)
WILSON SONSINI GOODRICH & ROSATI P.C.
650 Page Mill Road
Palo Alto, CA 94304-1050
Telephone: (650) 493-9300
Facsimile: (650) 565-5100
Email: lcunningham@wsgr.com
Email: lmulholland@wsgr.com
Email: nmilaninia@wsgr.com

Kathy Roberts (admitted *pro hac vice*)
CENTER FOR JUSTICE & ACCOUNTABILITY
870 Market Street, Suite 682
San Francisco, CA 94102
Telephone: (415) 544-0444
Facsimile: (415) 544-0456
Email: kroberts@cja.org

Attorneys for Plaintiffs

CERTIFICATE OF GOOD FAITH CONFERENCE

Pursuant to Local Rule 7.1(a)(3)(B), I hereby certify that counsel for the Plaintiffs has been unable to confer with all parties or non-parties who may be affected by the relief sought in this motion in a good faith effort to resolve the issues because Defendant is currently incarcerated, counsel for Defendant has withdrawn in this matter, Defendant has not otherwise made an appearance in this case and Defendant requires the service of a Spanish-speaking interpreter.

/s/ Julie C. Ferguson
JULIE C. FERGUSON

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Plaintiffs' Request for Entry of Default was served by U.S. Mail, on June 30, 2011, on counsel or parties of record on the service list.

Carlos Mario Jimenez-Naranjo, Register #29346-016
FDC Miami
Federal Detention Center
P.O. Box 019120
Miami, FL 33101

/s/ Julie C. Ferguson
JULIE C. FERGUSON

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Defendant.

[PROPOSED] ENTRY OF DEFAULT

Plaintiffs Jesús Cabrera Jaramillo, Jane Doe, and John Doe (collectively “Plaintiffs”) have requested the entry of default of defendant Carlos Mario Jiménez Naranjo (“Defendant”) pursuant to Federal Rule of Civil Procedure 55(a). The declaration of Nema Milaninia submitted in support of Plaintiffs’ request and the Court’s record in this action show that Defendant has failed to appear, plead, or otherwise defend as provided by the Federal Rules of Civil Procedure. Therefore, the DEFAULT of Defendant is hereby entered.

Dated: _____, 2011

UNITED STATES DISTRICT CLERK
SOUTHERN DISTRICT OF FLORIDA

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing [Proposed] Entry of Default was served by U.S. Mail, on June 30, 2011, on counsel or parties of record on the service list.

Carlos Mario Jimenez-Naranjo, Register #29346-016
FDC Miami
Federal Detention Center
P.O. Box 019120
Miami, FL 33101

/s/ Julie C. Ferguson
JULIE C. FERGUSON

General Information

Case Name	Jaramillo et al v. Naranjo
Docket Number	1:10-cv-21951
Court	United States District Court for the Southern District of Florida
Nature of Suit	Statutes: Other Statutory Actions