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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92052260
Party	Plaintiff Steven Westlake
Correspondence Address	MARK LEVY HINMAN HOWARD KATTELL LLP 80 EXCHANGE STREET, PO BOX 5250 BINGHAMTON, NY 13901 UNITED STATES mlevy@hhk.com
Submission	Motion for Default Judgment
Filer's Name	Mark Levy
Filer's e-mail	amanzer@hhk.com
Signature	/Mark Levy/
Date	11/01/2013
Attachments	POLICE GAZETTE Motion for Default Judgment 110113.pdf(937048 bytes) POLICE GAZETTE Levy Affirmation 110113.pdf(54515 bytes) POLICE GAZETTE Guyette Affirmation 110113.pdf(172348 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

STEPHEN A. WESTLAKE,)	MOTION FOR
)	DEFAULT JUDGMENT
Petitioner,)	Cancellation No. 92/052,260
)	(Serial No. 77/378,015)
EDGAR ALEXANDER BARRERA,)	
)	
Respondent.)	

Steven Westlake, being duly sworn deposes and states:

1. I am the petitioner in the instant matter before the United States Patent and Trademark Office (USPTO), and I submit this affidavit in support of my instant application for Default Judgment.
2. I filed a petition for cancellation on March 29, 2010.
3. The USPTO sent notice and set a date for receipt of respondent's answer in this case for 40 days after the mailing of the order. Included in that notice was a scheduling order set forth by the USPTO which set dates for important events to occur in this case; there was a date set for initial disclosure, expert disclosures, closure of discovery, the petitioner pre-trial disclosures; a thirty-day trial period; the respondent's pre-trial disclosures; followed by the respondent's thirty-day trial period, and a 15-day rebuttal period.
4. Thereafter, on May 7, 2010, the respondent appeared through counsel, Emmitt McAuliffe, Esq. On the same day, he requested an extension of time to answer which was stipulated to by my attorney.

5. An answer was filed on June 15, 2010. Thereafter, on July 23, 2010, my attorneys and respondent's attorney participated with the Board in a Discovery conference.
6. On August 13, 2010, the respondent filed a motion for extension of time with consent which was granted.
7. Thereafter, on September 15, 2010, my attorneys filed an amended petition on my behalf. Respondent was granted until October 12, 2010, to file an answer to the amended petition. Additionally, new dates were set with respect to initial disclosures, etc.
8. Thereafter, on October 8, 2010, the respondent sought a motion for an extension of time, stating as the reason a medical condition which was expected to last for at least 90 days, during which he would be unable to participate in his own case. On October 19, 2010, the USPTO granted the extension of time, allowing until January 12, 2011, for respondent to file an answer to the amended petition to cancel.
9. On January 7, 2011, the respondent, through counsel, requested a further extension of time to answer and resetting of the dates of the proceeding because respondent had a medical condition expected to last at least 90 days.
10. On January 13, 2011, the USPTO granted the respondent's request for extension, stating that the basis for the extension was respondent's medical condition, which "requires him to avoid unnecessary stress, including legal proceedings." The Board went on to state that it had concern about the proceeding not moving forward due to the possibility that additional requests to extend beyond the 90 days could be filed by respondent based on his medical problems. The Board noted that by granting the motion, respondent had been afforded six months to recover. The Board also stated that at some

point respondent would have to decide whether he “will defend this proceeding or not.”

The Board reset the dates of the proceeding accordingly.

11. On April 6, 2011, the respondent requested a further continuance on the basis that the respondent had a medical condition expected to last 45 days, during which time he would be unable to participate in his case. Thereafter, on April 18, 2011, the USPTO granted this further motion to extend all deadlines; stating, “Generally, the Board is liberal in granting extensions of time before the period to act has elapsed so long as the moving party has not been guilty of negligence or **bad faith** and the **privilege of extensions is not abused** (emphasis added). Moreover, the moving party must demonstrate that the requested extension is not necessitated by the moving party’s own lack of diligence or **unreasonable delay** in taking the required action during the time previously allotted” (emphasis added).

12. On May 24, 2011, the respondent made another motion to continuance on the basis that he had a medical condition expected to last for at least 90 days, during which he would be unable to participate in his case; on May 27, 2011, through counsel, the respondent filed his answer to the amended petition.

13. On June 13, 2011, the respondent made a motion for extension of time; my attorneys objected on June 17, 2011. Included in the opposition was my attorneys’ response that pancreatitis, the respondent’s alleged condition, should have been resolved in the eleven consecutive months that the respondent sought continuances.

14. In a decision filed June 29, 2011, the USPTO stated that the standard for granting an extension of time is good cause; FRCP 6(b) and TBMP §509.01(a)(3d ed. 2011). The Board noted the prior adjournments, and the physical limitations only on the respondent’s

ability to provide testimony but not on his ability to provide written disclosures or written discover or to otherwise participate in his own case. Neither of the conditions cited, dystonia (neck spasms) or gastritis would impair his ability to participate in the proceedings; nonetheless, the Board granted the motion through September 5, 2011.

15. On September 5, 2011, the respondent's attorney moved to withdraw on the basis that the respondent had not cooperated with his attorney, had not cooperated in preparation of timely responses to due dates and had significantly impeded his attorney's ability to comply with the procedural rules, had not responded to requests for documentation, had not paid his fees, and that he had not complied with providing the initial disclosures. According to his attorney, everyone in respondent's organization was suffering from debilitating medical conditions and could not assist them. It was clear from his attorney that the respondent was avoiding the issues of providing disclosures and discovery.

16. The respondent, filing on his own on September 6, 2011, moved to extend the time to file initial disclosures and to secure new legal counsel. Interestingly enough, the respondent, while representing to this tribunal that he was too sick to participate in his own trial, was able to provide his own motion, consisting of 15 paragraphs of single-spaced type, three pages, criticizing his attorney's motion to withdraw. Thereafter, the Board granted the respondent 30 days to obtain new counsel.

17. On January 6, 2012, the respondent moved for a further extension of time; he specifically outlined all of the actions that he took, enumerating what he did during the business week of December 1, 5, and specifically enumerating what he did on Monday, December 12, 13, 14, 15, 16 throughout and to Friday, December 30. His motion is in

excess of 22 paragraphs, seeking a further extension of time to secure new legal counsel. I respectfully point out that the respondent had sufficient energy and vitality to file the motion, yet, for some unexplained reason, could not cooperate with his own attorney in order to provide initial disclosures, or do so on his own.

18. On February 2, 2012, he repeated this action, this time setting forth his activities for January.

19. On February 13, 2012, he repeated the same type of motion, this time putting specific dates in for the month of January and February. This time his motion exceeded 33 paragraphs.

20. On February 22, 2012, my attorneys opposed his renewed efforts to extend the time, pointing out the absurdity of the situation wherein the respondent lived two hours away from his doctor's office and the fact that the respondent's condition, pancreatitis, can be treated with a few days' stay in the hospital with intravenous fluids, antibiotics, and medication to relieve pain. Absent complications, acute pancreatitis resolves in a few days, yet it seemingly lingered in respondent for eleven months.

21. On February 27, 2012, the respondent, apparently finding new energy, took issue with my attorneys' opposition, going so far as to pick apart irrelevant matters. I would note that the respondent's response is in excess of seven pages of single-spaced type. Again, I point out that the initial disclosures still had not been provided at this point.

22. On or about March 6, the respondent sought a stay; the documents stated that he has suffered some sort of a seizure and became unconscious. The document was signed by Melissa Barrera, as power of attorney, however, there is no power of attorney accompanying the document. My attorneys' response pointed out that Mr. Barrera,

despite his physical infirmity, would have to have been able to travel to a local post office to file things by certified mail, and pointed out that Mr. Barrera had sufficient physical ability to provide seven pages of rambling material in single-spaced typing while asserting he was not able to assist in his own representation.

23. The respondent responded on or about March 19, 2012, concluding with the statement that upon his discharge from hospitalization, he would properly respond to the Board proceedings. The Board noted that this was the respondent's fourth and fifth request for extension of time to hire new counsel, and that now through Melissa Barrera, respondent's power of attorney, respondent could respond. On April 24, 2012, the Board denied the latest request for a stay and the dates were resumed.

24. On May 11, 2012, the respondent, either disliking, disagreeing with, or completely ignoring the Board's authority, filed an "Emergency Motion for Extension of Time."

25. This time, the document states that the respondent nearly died three times that she knew of.

26. The document filed by the respondent's sister goes on to state that the initial disclosures included documents that were located in Florida, North Carolina and California.

27. It is clear from this document that the respondent's sister was familiar with what was required to be submitted and it was clear that he spoke with his sister with respect to filing this document, if indeed she was the person filing the document.

28. She stated that she needed time to study the case, as if she were going to represent her brother somehow.

29. On June 11, 2012, the Board reset the dates.
30. On July 15, 2012, the respondent filed a new "Emergency Motion for Extension of Time."
31. The Board granted an extension of time on September 11, 2012.
32. The respondent filed further motions on October 6 and November 13, 2012, this time, "Due to Extraordinary Circumstances Beyond the Respondent's Control." My attorneys by this time had grown tired of the time and expense to me of responding to these numerous frivolous requests and on December 6, 2012, the respondent now included as an excuse the health of Lester A. Euell, who had most of the important material necessary to prepare respondent's initial disclosures. The Board reset the date that initial disclosure was due to January 26, 2013.
33. Like clockwork, on January 21, 2013, the respondent submitted his Emergency Motion for Extension of Time, again, due to extraordinary circumstances beyond respondent's control.
34. The Board, in its discretion, declined to grant the motion on March 5, 2013. On March 15, 2013, the respondent, now adding a new title to the previous motion (as if he was preparing an abstract in the chain of title in a real estate transaction), titled "this submission motion to reconsider."
35. No new dates have been set.
36. On April 7, 2007, no one was using the National Police Gazette mark in commerce in any channel.
37. No periodical under that name and/or mark had been published since January, 1977.

38. Searches, including Library of Congress, WorldCat, Ulrich's, and the U.S. Copyright Office, from 2007 through 2010 revealed no mention of any Police Gazette publications beyond 1977.
39. Internet Google searches on numerous Police Gazette keywords from 2007 through 2010 revealed no Police Gazette publications, other than the petitioner's, after 1977, and no current Police Gazette goods or services of any kind other than the petitioner's.
40. Police Gazette Publishing Corporation was the publisher of the last regular issue in 1977 and owned the trademark at that time.
41. Police Gazette Publishing Corporation was never sold, transferred, dissolved or disposed of in any way.
42. No company or individual other than National Police Gazette Enterprises, LLC, published a National Police Gazette periodical from 1977 through 2009.
43. On April 8, 2007, content went live on www.PoliceGazette.US, the website of National Police Gazette Enterprises, LLC, and its trade name William A. Mays.
44. Petitioner has been using the National Police Gazette name and mark continuously in various channels of commerce ever since.
45. On April 8, 2007, the National Police Gazette mark with a "TM" designation was placed on every page of www.PoliceGazette.US.
46. Internet Google searches on Police Gazette keywords have listed www.PoliceGazette.US on the first page of results from 2007 onward.

47. On January 23, 2008, Edgar Alexander Barrera applied to the USPTO to register the National Police Gazette mark using as evidence a pair of digitally created images that supposedly represented magazine covers.

48. The USPTO accepted this in spite of no evidence that magazines or periodicals in any form actually existed – other than the petitioner’s.

49. For over two more years there continued to be no National Police Gazette activity in commerce other than the petitioner’s.

50. On March 29, 2010, the petitioner filed his original petition to cancel with the TTAB.

51. Three months later, during June and July, 2010, content was put up on “Police Gazette” websites other than the petitioner’s for the first time.

52. During these months, Edgar Alexander Barrera registered eight different internet domains with “policegazette” in the name.

53. On June 27, 2010, a “Police Gazette” account not belonging to the petitioner was registered at www.issuu.com and a “June 2010” issue of a Police Gazette publication was posted.

54. This issue was apparently submitted to the Library of Congress, which used information from it to update its entry on the National Police Gazette.

55. Information on publishers now for the first time includes “Police Gazette Publishing House, <1977-1997>; Franklin Printing Company, <1991 – 2006>; Alexander Barrera, <2006 - >,” all of which is a complete fabrication.

56. Nothing new has appeared on the Barrera websites or at ISSUU since 2010; no Police Gazette publications or other goods or services have been made public by the respondent for over three years.

57. Edgar Alexander Barrera and his power of attorney have claimed continuously in official TTAB filings up to the present that he has been in seriously ill health since September, 2010.

58. Yet, on June 13, 2012, Edgar Alexander Barrera was arrested for domestic violence assault on Lester Euell.

593 The police report detailed Barrera's ability to climb through a window and almost break down a door. No mention was made of ill health.

60. On November 2, 2012, Edgar Alexander Barrera was arrested for felony battery on person over 65, felony battery on law enforcement officers, felony resisting arrest with violence, and driving under the influence.

61. It took several police officers to bring him under control.

62. No mention was made in the police report of Barrera being in ill health.

63. On April 8, 2013, Edgar Alexander Barrera was cited for failure to obey DL restrictions and driving on hard surface damaging road.

64. On June 3, 2013, Edgar Alexander Barrera was arrested for driving under the influence.

65. Throughout all of Barrera's incarcerations and court appearances, his lawyers have never requested extensions or special treatment based on Barrera's health.

66. On October 6, 2012, Melissa Barrera, as power of attorney, filed an “emergency motion for extension and stay of proceedings”, saying she could not comply because Lester Euell is sick.

67. In the two-and-one-half years this proceeding had been going, this is the first mention of Lester Euell.

68. The entire time, Barrera had been claiming he did not have anyone knowledgeable who could help him.

69. Now it is claimed that Lester Euell is very knowledgeable, but that he is too sick to contribute.

70. In reality, Lester Euell was never an owner of the National Police Gazette.

71. Lester Euell has previously been convicted of felony fraud.

72. Police reports list Edgar Alexander Barrera and Lester Euell as living together at 1539 Valencia Avenue, Daytona Beach, Florida.

73. The report dated November 2, 2012, notes that the supposedly sick Lester Euell was “working in his office” when the altercation broke out.

74. While my attorneys have complied with the initial disclosures (copy enclosed) my attorneys inform me that they never received any such disclosures from the respondent.

75. In fact, all of the respondent’s efforts have been directed at seeking extensions for time to respond which is unnecessarily delaying and dragging out this case.

76. I would point out that the respondent’s attorney withdrew based on a number of reasons including the respondent’s failure to cooperate.

77. I would point out that the reasons that the respondent has given for the numerous extensions are fictitious; each time he has sought an extension since he has been representing himself he has cited health reasons as the necessary reason.

78. Exhibit A shows an arrest report filed June 13, 2012. Exhibit B shows an arrest report filed November 2, 2012.

79. It is clear that the respondent is healthy enough to allegedly engage in criminal actions that require physical exertion, therefore, it is beyond comprehension how he cannot exert enough energy in order to participate in the instant litigation including providing necessary responses.

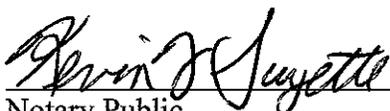
80. For the foregoing reasons, I submit that respondent's appearance in this litigation has completely been a sham; that he has never had a good-faith intention to participate. He is merely prolonging this proceeding so that he can keep his name attached to a notable trademark. Therefore, I respectfully ask that the USPTO grant default judgment in this action and declare or state or propose a judgment of cancellation

Dated: October 14, 2013



Steven Westlake, Petitioner

Sworn and subscribed to before
me this 14th day of October, 2013



Notary Public

KEVIN F. GUYETTE, ESQ.
Notary Public, State of New York
No. 02GU5009656
Qualified in Broome County
Commission Expires March 18, 2015

EXHIBIT A

EXHIBIT #

7th. Judicial Circuit 707
Charging Affidavit - Volusia

Report No. 120017462 Nature of Call: 22B Report Date: 06-12-2012 Report Time: 2223 District: 03
Confidential: 0100 Arrest # _____ Bk # _____ Pg # 1 of 3

ARREST <input checked="" type="checkbox"/>	NOTICE TO APPEAR <input type="checkbox"/>	AFFIDAVIT <input type="checkbox"/>	C.C. <input type="checkbox"/>	ADULT <input checked="" type="checkbox"/>	JUVENILE <input type="checkbox"/>	Court Case Number: 1239881MMAES
(ORI) FL: FL0640000	Agency Name: VOLUSIA COUNTY SHERIFF'S OFFICE	Agency Case Number: 120017462				
FCIC/NCIC Check? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	OBTS # 6402204894	U.C.R.:	Date Arrested: 06-12-2012	Time of Arrest: 2311		
ADDRESS OF ARREST (Street, City, State, Zip): 1539 VALENCIA AVE. DAYTONA BEACH FL 32117			Arrested By: Clark, Kenneth	ID Number: 7737		
DEFENDANT NAME (Last) 1 BARRERA (First) EDGAR (Middle) A		A.K.A.:	Sex: M	Race: W		
DOB: 03-31-1982	Age: 30	Driver's Lic./ID No.: B665201821110	State: FL	Year Expires: 2019	S.S.# -	
Height: 5' 10	Weight: 140	Hair: BLK	Eyes: BRO	P.O.B. (City, State, Country): GUATEMALA CIT	GT	
Scars, Marks, Tattoos:		Business & Occupation:			Statement: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
Probation: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		Sexual Predator: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		English: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		Deaf/Blind: Yes <input type="checkbox"/> No <input type="checkbox"/>
Address - Mailing/Permanent: 1539 VALENCIA AVE.		(STREET, APT. NUMBER)	(CITY) DAYTONA BEACH	(STATE) FL	ZIP CODE 32117	RESIDENCE PHONE (386) 852-0012
Address - Local:		(STREET, APT. NUMBER)	(CITY)	(STATE)	ZIP CODE	RESIDENCE PHONE
Address - Other (Employer/School):		(STREET, APT. NUMBER)	(CITY)	(STATE)	ZIP CODE	BUS/SCHOOL PHONE

CHARGES		DOMESTIC VIOLENCE? Yes <input checked="" type="checkbox"/>	Attachments: Affidavit(s) <input type="checkbox"/>	Statement(s) <input type="checkbox"/>	NTA Schedule <input type="checkbox"/>	Report <input type="checkbox"/>	Traffic Infraction(s) <input type="checkbox"/>	DUI <input type="checkbox"/>	Total Charges: 1
#1	Charge: Assault/Intentional Threat to do Viol. (DV)	FEL <input type="checkbox"/>	MISD <input checked="" type="checkbox"/>	ORD <input type="checkbox"/>	FS/ORD: 784.011	Citation No.:	Bond: NO BOND		
#2	Charge:	FEL <input type="checkbox"/>	MISD <input type="checkbox"/>	ORD <input type="checkbox"/>	FS/ORD:	Citation No.:	Bond:		
#3	Charge:	FEL <input type="checkbox"/>	MISD <input type="checkbox"/>	ORD <input type="checkbox"/>	FS/ORD:	Citation No.:	Bond:		

CO-DEFENDANT		Co-Def #1. Arrested? Y <input type="checkbox"/> N <input type="checkbox"/>	Fel. <input type="checkbox"/> Misd. <input type="checkbox"/> Traf. <input type="checkbox"/> Ord. <input type="checkbox"/> NTA <input type="checkbox"/>	Co-Def #2. Arrested? Y <input type="checkbox"/> N <input type="checkbox"/>	Fel. <input type="checkbox"/> Misd. <input type="checkbox"/> Traf. <input type="checkbox"/> Ord. <input type="checkbox"/> NTA <input type="checkbox"/>
#1	NAME (Last) (First) (Middle)	Race:	Sex:	DOB:	Age:
#2	NAME (Last) (First) (Middle)	Race:	Sex:	DOB:	Age:

NARRATIVE The undersigned certifies and swears that there is probable cause to believe the above-named defendant, on the 12 day of June, 2012, at approximately 1111 a.m. p.m. at 1539 VALENCIA AVE. DAYTONA BEACH within Volusia County, violated the law and did then and there:

1 intentionally and unlawfully threaten by word or act to do violence to Lester A. Euell (Victim), coupled with an apparent ability to do so, which created a well-founded fear in Euell that such violence was imminent, contrary to Florida Statute 784.011.
 2
 3
 4 On Tuesday, 06/12/2012, at approximately 2323 hours, Deputy Clark responded to 1539 Valencia Ave., in reference to a report of a domestic disturbance.
 5
 6
 7 Upon arrival, Deputy Clark met with Euell who stated Edgar A Barrera (Defendant), whom he lives with as a family unit, verbally assaulted him this evening. Euell stated he was named Barrera's Godfather when he was born. Euell stated he and Barrera have resided together in the same home for the past eight years. Euell advised Barrera had arrived home this evening and was intoxicated. Euell advised he did not want Barrera to enter the house in such a state as there has been violence in the past when Barrera drinks. Euell advised Barrera entered through the front window at which time he called the Sheriff's Office. Euell advised he locked himself in his room to avoid Barrera. Euell stated Barrera attempted to break the door to gain entry into his room. Euell stated Albert J. Kerling (Witness) had to physically restrain Barrera from breaking the door and entering the room. Euell stated Barrera threatened to harm him which caused a well founded fear. Euell stated he is afraid Barrera will kill him. Euell advised he has suffered a stroke in the past and does not feel he could defend himself from Barrera. Euell stated he wished to pursue criminal charges. Euell advised he was not injured during this incident and refused medical treatment. Euell completed a sworn written statement and was provided with a Domestic Violence

NOTICE TO APPEAR	MANDATORY APPEARANCE <input type="checkbox"/>	YOU NEED NOT APPEAR IN COURT BUT MUST COMPLY WITH INSTRUCTIONS ON THE REVERSE SIDE OF YOUR COPY <input type="checkbox"/>	FINE, AND COSTS AMOUNT:
------------------	---	--	-------------------------

I AGREE TO APPEAR IN COURT HEREIN TO ANSWER THE OFFENSE CHARGED OR TO PAY THE FINE INDICATED, I UNDERSTAND THAT SHOULD I WILLFULLY FAIL TO APPEAR BEFORE THE COURT AS REQUIRED, OR PAY THE LISTED FINE, I MAY BE HELD IN CONTEMPT OF COURT AND A WARRANT FOR MY ARREST WILL BE ISSUED.

SIGNATURE OF DEFENDANT: Schumann TD 715 Jm & SOD	Date:	SIGNATURE OF JUVENILE PARENT OR CUSTODIAN:	JUVE DISP. CITATION:
Sworn to and subscribed before me, the undersigned this <u>12</u> day of <u>June</u> , 2012	Name: Sgt. J. Lawrence	OFFICER'S/COM. CLERK'S SIGNATURE: [Signature]	Relationship to Juvenile:
Notary Public <input type="checkbox"/> Law Enforcement or Corrections Officer <input checked="" type="checkbox"/>	Personality Known <input type="checkbox"/> Produced Identification <input type="checkbox"/>	CLARK, KENNETH NAME (PRINTED)	7737 ID NUMBER
Type of Identification:	Inmate Number & Facility:	Filed in Open Court Seventh Judicial Circuit Volusia County, Florida JUN 13 2012 Barr	

00630239

Narrative Supplement 707-B

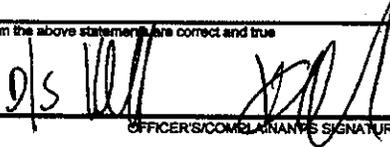
Arrest
 Affidavit
 Notice to Appear
 Adult
 Juvenile

Court Case Number:

Page # 2 of 3

Defendant (Last) Name: BARRERA	(First) EDGAR	(Middle) A	Agency Case Number: 120017462
CHARGES		DOMESTIC VIOLENCE? Yes <input type="checkbox"/>	Attachments: Affidavit(s)? <input type="checkbox"/> Statement(s) <input type="checkbox"/> NTA Schedule <input type="checkbox"/> Report <input type="checkbox"/> Traffic Infraction(s) <input type="checkbox"/> Total Charges:
#	Charge:	FEL <input type="checkbox"/> MISD <input type="checkbox"/> ORD <input type="checkbox"/>	FS/ORD: Citation No.: Bond:
#	Charge:	FEL <input type="checkbox"/> MISD <input type="checkbox"/> ORD <input type="checkbox"/>	FS/ORD: Citation No.: Bond:
#	Charge:	FEL <input type="checkbox"/> MISD <input type="checkbox"/> ORD <input type="checkbox"/>	FS/ORD: Citation No.: Bond:

16 Rights and Remedies Pamphlet which he signed for.
 17
 18 Deputy Clark met with Kerling who stated he had to physically restrain Barrera from breaking down the bedroom door to Euell's room. Kerling
 19 completed a sworn written statement.
 20
 21 Upon learning Deputies were enroute, Barrera fled from the residence. Barrera was located a short time later in the bathroom of the Walmart located
 22 on Flomich St. and Nova Rd.
 23
 24 Barrera was placed under arrest for Assault (Domestic Violence) and was subsequently transported without incident to the Volusia County Branch
 25 Jail.
 26
 27 It should be noted, this was the second response to the defendants residence this evening. During the first response the defendant admitted he had a
 28 substance abuse problem and needed help. The defendant voluntarily went to the hospital for treatment, but never admitted himself.

Sworn to and subscribed before me, the undersigned this <u>12</u> day of <u>June</u> , 2012 Name: <u>Sgt. J. Dawood</u>	I swear/affirm the above statements are correct and true 	Right Thumb
Notary Public <input type="checkbox"/> Law Enforcement Officer <input checked="" type="checkbox"/> Personally Known <input type="checkbox"/> Produced Identification <input type="checkbox"/>	OFFICER'S/COMPLAINANT'S SIGNATURE CLARK, KENNETH	
Type of Identification:	7737 ID NUMBER	

Witness/Victim/Evidence Form 707-A

Arrest
 Affidavit
 Notice to Appear
 Adult
 Juvenile

Court Case Number: 120017462

Page # 3 of 3

Defendant (Last) Name: BARRERA		(First) EDGAR		(Middle) A		Agency Case Number: 120017462					
Name: (Last) 1 EUVELL		(First) LESTER		(Middle) A		Vic <input type="checkbox"/> Wt <input type="checkbox"/>	Race: <input checked="" type="checkbox"/> W	Sex: <input checked="" type="checkbox"/> M <input type="checkbox"/> F	Age: 56	DOB: 10-18-1955	SSN:
Address (#, Street, City, State): 1539 VALENCIA AVE. DAYTONA BEACH FL						Zip: 32117		Home: (388) 852-0085		Statement: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Bus/School Address:						Zip:		Home: (388) 852-6258		Bus: <input type="checkbox"/> Yes <input type="checkbox"/> No	
Relative/Contact Name:						Relative/Contact Address:		Phone:		Bus: <input type="checkbox"/> Yes <input type="checkbox"/> No	
Name: (Last) 1 KERLING		(First) ALBERT		(Middle) J		Vic <input checked="" type="checkbox"/> Wt <input type="checkbox"/>	Race: <input checked="" type="checkbox"/> W	Sex: <input checked="" type="checkbox"/> M <input type="checkbox"/> F	Age: 71	DOB: 08-08-1940	SSN:
Address (#, Street, City, State): 1539 VALENCIA AVE. DAYTONA BEACH FL						Zip: 32117		Home: (388) 852-6258		Statement: <input type="checkbox"/> Yes <input type="checkbox"/> No	
Bus/School Address:						Zip:		Home: (388) 852-6258		Bus: <input type="checkbox"/> Yes <input type="checkbox"/> No	
Relative/Contact Name:						Relative/Contact Address:		Phone:		Bus: <input type="checkbox"/> Yes <input type="checkbox"/> No	
Name: (Last)		(First)		(Middle)		Vic <input type="checkbox"/> Wt <input type="checkbox"/>	Race: <input type="checkbox"/> M <input type="checkbox"/> F	Age:	DOB:	SSN:	
Address (#, Street, City, State):						Zip:		Home: (388) 852-6258		Statement: <input type="checkbox"/> Yes <input type="checkbox"/> No	
Bus/School Address:						Zip:		Home: (388) 852-6258		Bus: <input type="checkbox"/> Yes <input type="checkbox"/> No	
Relative/Contact Name:						Relative/Contact Address:		Phone:		Bus: <input type="checkbox"/> Yes <input type="checkbox"/> No	
Name: (Last)		(First)		(Middle)		Vic <input type="checkbox"/> Wt <input type="checkbox"/>	Race: <input type="checkbox"/> M <input type="checkbox"/> F	Age:	DOB:	SSN:	
Address (#, Street, City, State):						Zip:		Home: (388) 852-6258		Statement: <input type="checkbox"/> Yes <input type="checkbox"/> No	
Bus/School Address:						Zip:		Home: (388) 852-6258		Bus: <input type="checkbox"/> Yes <input type="checkbox"/> No	
Relative/Contact Name:						Relative/Contact Address:		Phone:		Bus: <input type="checkbox"/> Yes <input type="checkbox"/> No	
Name: (Last)		(First)		(Middle)		Vic <input type="checkbox"/> Wt <input type="checkbox"/>	Race: <input type="checkbox"/> M <input type="checkbox"/> F	Age:	DOB:	SSN:	
Address (#, Street, City, State):						Zip:		Home: (388) 852-6258		Statement: <input type="checkbox"/> Yes <input type="checkbox"/> No	
Bus/School Address:						Zip:		Home: (388) 852-6258		Bus: <input type="checkbox"/> Yes <input type="checkbox"/> No	
Relative/Contact Name:						Relative/Contact Address:		Phone:		Bus: <input type="checkbox"/> Yes <input type="checkbox"/> No	

EVIDENCE COLLECTED

Description of Evidence	Date Recovered	Model Serial/I.D. Number	Drug Amount
Owner Name (Last) (First) (Address)		(Phone)	Value
Description of Evidence	Date Recovered	Model Serial/I.D. Number	Drug Amount
Owner Name (Last) (First) (Address)		(Phone)	Value
Description of Evidence	Date Recovered	Model Serial/I.D. Number	Drug Amount
Description of Evidence	Date Recovered	Model Serial/I.D. Number	Drug Amount
Description of Evidence	Date Recovered	Model Serial/I.D. Number	Drug Amount
Description of Evidence	Date Recovered	Model Serial/I.D. Number	Drug Amount
Description of Evidence	Date Recovered	Model Serial/I.D. Number	Drug Amount
Description of Evidence	Date Recovered	Model Serial/I.D. Number	Drug Amount
Description of Evidence	Date Recovered	Model Serial/I.D. Number	Drug Amount
Description of Evidence	Date Recovered	Model Serial/I.D. Number	Drug Amount

I certify that the foregoing is a complete list of witnesses/victims & evidence known to me.

CLARK, KENNETH
Investigating Officer

7737
ID Number

VCSSO
Agency

1202191

in court

Booking Number: 876759

Barrera, Edgar (Defendant)

Case Number: 12039881 NUNAES

Charges:

1. Domestic Violence Assault

2. _____

3. _____

4. _____

5. _____

6. _____

PRETRIAL SUPERVISION ORDER

The above named defendant is hereby placed under supervision by Pretrial Services, subject to the following conditions:

Standard Conditions:

The defendant will allow a Pretrial Services Officer to conduct visits at his/her residence and/or his/her job site. The defendant understands that this court-ordered release may be revoked and that he/she may be subject to incarceration if:

- ...he/she violates any Federal, State, or Local laws, including criminal traffic violations.
...he/she fails to appear at any scheduled court hearing.
...he/she fails to report to his/her assigned Pretrial Services Officer as scheduled.
...he/she fails to provide an acceptable urine specimen for drug testing when instructed by his/her assigned Pretrial Services Officer.
...he/she changes residence or telephone status without first advising his/her assigned Pretrial Services Officer.
...he/she leaves the state of Florida without permission from the Court.
...he/she fails to comply with any of the special conditions of release specified below.

Special Conditions:

In addition to the standard conditions listed above, the defendant must comply with all special conditions indicated below. Pretrial Services may adjust supervision requirements based on compliance with conditions of release without further notice or hearing.

- () No contact with the victim/witness/co-defendant.
[X] No violent contact with the victim/witness/co-defendant.
() May return to residence with law enforcement to retrieve belongings.
[X] Do not consume alcohol.
[X] Do not use drugs without a valid prescription.
() Take medications as prescribed.
[X] Submit to random urinalysis.
[X] Do not possess firearms, weapons, or chemical sprays.
() Anti-Drug Initiative/Level 1 Candidate.
() Electronic Monitoring.
() Call-in status.

Victim/Witness/Co-defendant: Euell, Lester

Post \$ 200 bond, then report to Pretrial Services

You must report to the Pretrial Services Office indicated below on the second workday after your release from custody between 8:00 am and 11:00 am:

- [X] Daytona Beach: S. James Foxman Justice Center, 251 N. Ridgewood Ave., Rm. 131
() DeLand: Volusia County Courthouse, 101 N. Alabama Ave., Rm. B-123
() Electronic Monitoring/GPS: You will receive reporting instructions from Pretrial Services upon release from jail.

12 JUN 11 PM 2:00 FILED DEPT. OF CORRECTIONS & COUNTY VOLUSIA CO. FL

PRETRIAL SUPERVISION ORDER

Pursuant to Rule 3.131, Fla.R.Cr.P., the defendant is hereby subject to the court-ordered supervision conditions of Pretrial Services

DATE 6/13/12 PTS OFFICER [Signature] PER CIRCUIT/COUNTY JUDGE D. FOXMAN

FIRST APPEARANCE ACTION FORM

CASE: CTC1239881MMAES
STATE OF FLORIDA
VS
BARRERA, EDGAR
SPN: 00630639
BKG#: WSB76759

FIRST APPEARANCE DATE: 06-13-2012
CELL: 01C11U

DIANE M. MATOUSEK
CLERK OF THE CIRCUIT COURT
VOLUSIA COUNTY, FLORIDA
P.O. BOX 6043
DELAND, FL 32721-6043

The defendant was advised of his/her rights and furnished a copy of the complaint.
The court has examined the sworn complaint and hereby finds and orders:

<input checked="" type="checkbox"/> Defendant indigent - PD appointed	<input type="checkbox"/> No contact with victim(s), witness(s), & co-defendant(s) - See separate order	<input checked="" type="checkbox"/> Do not consume alcohol
<input type="checkbox"/> Defendant not indigent - to retain counsel	<input type="checkbox"/> Do not possess firearms/weapons	<input checked="" type="checkbox"/> Random urinalysis

M/ASSAULT/INTENT THREAT (DV)	STATE ATTORNEY ACTION		
<input checked="" type="checkbox"/> Probable Cause Found	<input type="checkbox"/> Charge Amended to	<input type="checkbox"/> _____ days VCI, less _____ days credit	
<input type="checkbox"/> PC Under Review 72 hours	<input type="checkbox"/> No information		
<input type="checkbox"/> Insufficient PC	PLEA ACTION	<input type="checkbox"/> \$223.00 Misdemeanor	<input type="checkbox"/> \$575.00 Misd. Asslt. & Battery
<input type="checkbox"/> ROR	<input type="checkbox"/> Guilty Plea	<input type="checkbox"/> \$238.00 Misd. Drug & Alcohol	<input type="checkbox"/> \$500.00 Prostitution
<input checked="" type="checkbox"/> PTR (Supervised Release - See separate order)	<input type="checkbox"/> Nolo Plea		
BOND SET AT \$ _____			

	STATE ATTORNEY ACTION		
<input type="checkbox"/> Probable Cause Found	<input type="checkbox"/> Charge Amended to	<input type="checkbox"/> _____ days VCI, less _____ days credit	
<input type="checkbox"/> PC Under Review 72 hours	<input type="checkbox"/> No information		
<input type="checkbox"/> Insufficient PC	PLEA ACTION	<input type="checkbox"/> \$223.00 Misdemeanor	<input type="checkbox"/> \$575.00 Misd. Asslt. & Battery
<input type="checkbox"/> ROR	<input type="checkbox"/> Guilty Plea	<input type="checkbox"/> \$238.00 Misd. Drug & Alcohol	<input type="checkbox"/> \$500.00 Prostitution
<input type="checkbox"/> PTR (Supervised Release - See separate order)	<input type="checkbox"/> Nolo Plea		
BOND SET AT \$ _____			

	STATE ATTORNEY ACTION		
<input type="checkbox"/> Probable Cause Found	<input type="checkbox"/> Charge Amended to	<input type="checkbox"/> _____ days VCI, less _____ days credit	
<input type="checkbox"/> PC Under Review 72 hours	<input type="checkbox"/> No information		
<input type="checkbox"/> Insufficient PC	PLEA ACTION	<input type="checkbox"/> \$223.00 Misdemeanor	<input type="checkbox"/> \$575.00 Misd. Asslt. & Battery
<input type="checkbox"/> ROR	<input type="checkbox"/> Guilty Plea	<input type="checkbox"/> \$238.00 Misd. Drug & Alcohol	<input type="checkbox"/> \$500.00 Prostitution
<input type="checkbox"/> PTR (Supervised Release - See separate order)	<input type="checkbox"/> Nolo Plea		
BOND SET AT \$ _____			

Defendant Address Change/Verification: _____

DIANE M. MATOUSEK, CLERK OF THE CIRCUIT COURT
Filed in Open Court this 13 day of JUNE, 20 12
DEPUTY CLERK IN ATTENDANCE

Done and Ordered in Volusia County, Florida this 13 day of JUNE, 20 12

ASSISTANT STATE ATTORNEY

PRESIDING JUDGE

Copy Distribution: Court File (original) -- Booking - State Attorney -- Defense Attorney/Defendant

IN THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT
IN AND FOR VOLUSIA COUNTY, FLORIDA

MMAE

STATE OF FLORIDA
vs.

Case No. 2012-39881

Carrera, Edgar
Defendant

Description of Defendant
Sex: M Race: W
DOB: 3/31/82

ORDER REGARDING CONTACT BEFORE TRIAL

It is intended that this order meet the requirements of 18 U.S.C., s. 2265, and therefore intended that it be accorded the full faith and credit by the court of another state or Indian tribe as if it were the order of the enforcing state or of the Indian tribe.

Pursuant to Sec. 903.047 Florida Statutes, the Defendant is granted pretrial release under the following conditions, and it is hereby ORDERED that the Defendant:

1. a. Shall have no contact with the protected person(s) Lester Cuell either directly or indirectly, through mail, e-mail, fax, telephone, through another person, or in any other manner. If the protected person(s) attempts to contact you, you are violating this Order if you communicate with him/her. Unless otherwise provided herein, Defendant shall not go to, in, or within 500 feet of: protected person's current or future residence; current or future place of employment; or current or future school. Defendant shall not knowingly go within 100 feet of the protected person's automobile at any time.
b. May have peaceful, non-violent contact with the protected person(s) _____
2. May return to the residence one time only at a time arranged with a law enforcement agency with jurisdiction over the residence, to obtain personal belongings, including clothing, items of personal hygiene and tools of the trade. Going to the residence without a law enforcement officer is a violation of your pretrial release. A law enforcement officer with jurisdiction over the residence from which these items are retrieved shall accompany defendant to the home and stand by to ensure that defendant vacates the premises with only such personal belongings.
3. a. Shall not use, possess, or purchase a firearm or ammunition.
b. Shall surrender any firearms and ammunition in defendant's possession to the Volusia County Sheriff's Department or local law enforcement agency and submit a written receipt to the Clerk of Court within 48 hours.
4. Shall refrain from criminal activity of any kind. Shall not use, threaten, or attempt to use physical force against the protected person(s).

ORDERED on 6-13-12 in Volusia County, Florida

[Signature]
CIRCUIT/COUNTY JUDGE

This Order shall remain in effect until this case is concluded, unless modified by the Court. This Court is aware that in certain cases there may be a possible conflict between the terms of this Order and an injunction, visitation, shared parenting, or other court order. The terms of this Order must be followed if the Defendant is to remain on pretrial release.

Violation of this Order will subject you to arrest. Upon probable cause to believe that you violated the terms of this Order, law enforcement is authorized, pursuant to Sec. 901.15, Florida Statutes, to conduct a warrantless arrest of you, the Defendant. A willful violation of the terms of the Order constitutes a misdemeanor of the first degree, pursuant to Sec. 741.29(6), Florida Statutes. This carries a maximum punishment upon conviction of one (1) year in jail and a fine of \$1,000.00, or may subject Defendant to a criminal contempt of court charge and/or result in revocation of bond and/or pretrial release.

Pursuant to Sec. 741.29(6), Florida Statutes, after arrest for violation of this Order, the Defendant is to be held in custody until his/her First Appearance.

I understand that I can be returned to custody pending trial without further hearing upon violation of the conditions as set forth herein and that I will be subject to a federal felony if this order involves an intimate partner and/or family member and I possess a firearm or ammunition in violation of this Order. I acknowledge receiving a copy of this Order.

Filed in Open Court
Seventh Judicial Circuit
Volusia County, Florida

[Signature]
DEFENDANT

Copies to:

1. Defendant (by hand delivery in open court)
2. State Attorney (for protected person(s))

JUN 13 2012

JS-0211-1210

ORCT

EXHIBIT B

Exhibit B

7th. Judicial Circuit 707 Charging Affidavit - Volusia

Report No. 120032145 887235

Nature of Call: 22B Confidential: 0226

Report Date: 11-01-2012 Report Time: 2300 District: 03 Arrest # Bk # Pg # 1 of 3

ARREST <input checked="" type="checkbox"/> NOTICE TO APPEAR <input type="checkbox"/> AFFIDAVIT <input type="checkbox"/> C.C. <input type="checkbox"/> ADULT <input checked="" type="checkbox"/> JUVENILE <input type="checkbox"/>		Court Case Number: 1736793 CAES	
(ORI) FL: FL0840000		Agency Name: VOLUSIA COUNTY SHERIFF'S OFFICE	
FCIC/NCIC Check? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		OBTS #: 6402210772	
ADDRESS OF ARREST (Street, City, State, Zip): 1539 VALENCIA AVENUE DAYTONA BEACH FL 32117		Arrested: 11-02-2012	
DEFENDANT NAME (Last, First, Middle): 1 BARRERA-MANSILLA EDGAR A		A.I.K.A.: Miller, Dennis	
DOB: 03-31-1982		Arrested: 11-02-2012	
Age: 30		Arrested: 11-02-2012	
Driver's Lic./ID No.: B665-201-82-111-0		Arrested: 11-02-2012	
Height: 5' 10		Arrested: 11-02-2012	
Weight: 220		Arrested: 11-02-2012	
Hair: BLK		Arrested: 11-02-2012	
Eyes: BRO		Arrested: 11-02-2012	
P.O.B. (City, State, Country): GT		Arrested: 11-02-2012	
Scars, Marks, Tattoos:		Arrested: 11-02-2012	
Business & Occupation:		Arrested: 11-02-2012	
Probation: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		Arrested: 11-02-2012	
Sexual Predator: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		Arrested: 11-02-2012	
English: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		Arrested: 11-02-2012	
Dest/Mute: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		Arrested: 11-02-2012	
Address - Mailing/Permanent (STREET, APT. NUMBER): 1539 VALENCIA AVENUE		Arrested: 11-02-2012	
(CITY): DAYTONA BEACH (STATE): FL		Arrested: 11-02-2012	
ZIP CODE: 32117		Arrested: 11-02-2012	
RESIDENCE PHONE: (386) 852-0012		Arrested: 11-02-2012	
Address - Local (STREET, APT. NUMBER):		Arrested: 11-02-2012	
(CITY): (STATE): ZIP CODE: BUS/SCHOOL PHONE:		Arrested: 11-02-2012	
Address - Other (Employer/School) (STREET, APT. NUMBER):		Arrested: 11-02-2012	
(CITY): (STATE): ZIP CODE: BUS/SCHOOL PHONE:		Arrested: 11-02-2012	
CHARGES DOMESTIC VIOLENCE? Yes <input checked="" type="checkbox"/>		Arrested: 11-02-2012	
Attachments: Affidavit(s) <input type="checkbox"/> Statement(s) <input type="checkbox"/> NTA Schedule <input type="checkbox"/> Report <input type="checkbox"/> Traffic Infraction(s) <input type="checkbox"/> DUI <input type="checkbox"/> Total Charges: 5		Arrested: 11-02-2012	
#1 Charge: Battery on Prsn. 65 YOA or Older (Reclass) FEL <input checked="" type="checkbox"/> MISD <input type="checkbox"/> ORD <input type="checkbox"/> FS/ORD: 784.08(2)(C)		Arrested: 11-02-2012	
Citation No.: Bond: NO BOND		Arrested: 11-02-2012	
#2 Charge: Battery on LEO/Firefighter/EMT/etc FEL <input checked="" type="checkbox"/> MISD <input type="checkbox"/> ORD <input type="checkbox"/> FS/ORD: 784.07(2)(B)		Arrested: 11-02-2012	
Citation No.: Bond: 5,000		Arrested: 11-02-2012	
#3 Charge: Battery on LEO/Firefighter/EMT/etc FEL <input checked="" type="checkbox"/> MISD <input type="checkbox"/> ORD <input type="checkbox"/> FS/ORD: 784.07(2)(B)		Arrested: 11-02-2012	
Citation No.: Bond: 5,000		Arrested: 11-02-2012	
CO-DEFENDANT Co-Def #1. Arrested? Y <input type="checkbox"/> N <input type="checkbox"/> Fel. <input type="checkbox"/> Misd. <input type="checkbox"/> Traf. <input type="checkbox"/> Ord. <input type="checkbox"/> NTA <input type="checkbox"/>		Arrested: 11-02-2012	
Co-Def #2. Arrested? Y <input type="checkbox"/> N <input type="checkbox"/> Fel. <input type="checkbox"/> Misd. <input type="checkbox"/> Traf. <input type="checkbox"/> Ord. <input type="checkbox"/> NTA <input type="checkbox"/>		Arrested: 11-02-2012	
#1 NAME (Last, First, Middle): Race: Sex: DOB: Age:		Arrested: 11-02-2012	
#2 NAME (Last, First, Middle): Race: Sex: DOB: Age:		Arrested: 11-02-2012	
NARRATIVE The undersigned certifies and swears that there is probable cause to believe the above-named defendant,			
on the 01 day of November, 2012, at approximately 1100 a.m. <input type="checkbox"/> p.m. <input checked="" type="checkbox"/>			
at 1539 VALENCIA AVENUE DAYTONA BEACH within Volusia County, violated the law and did then and there:			
1 On Thursday, 11/01/2012, at approximately 2301 hours, Deputy Miller was dispatched and responded to 1539 Valencia Avenue, Daytona Beach, in			
2 reference to a report of a disturbance. Upon arrival, Deputy Miller observed a silver in color Ford passenger car bearing Florida license plate X039DT			
3 backing out of the driveway. Deputy Miller activated his emergency lights and the vehicle stopped in the driveway. Deputy Miller contacted the			
4 vehicle's operator, the defendant, and instructed him to exit the vehicle. Deputy Miller observed a strong odor of alcoholic beverage emanating from			
5 the vehicle. The defendant was instructed to sit next to the vehicle, which he refused to do. After several verbal commands the defendant sat down.			
6 While in contact with the defendant, Deputy Miller observed the defendant was unable to stand without swaying back and forth. Additionally, the			
7 defendant had bloodshot eyes, slurred speech, and was sweating, all of which indicated he was under the influence of alcohol and/or narcotics.			
8			
9 Deputy Miller contacted Albert Kerling (V1) who advised he and his step god-son, the defendant, were involved in a physical altercation. According to			
10 Kerling, the defendant arrived home at approximately 2230 hours. Kerling stated the defendant appeared intoxicated and sat down on the living room			
11 couch. Kerling further stated the defendant fell asleep. Kerling sat next to the defendant in order to watch over him. At approximately 2300 hours,			
12 Kerling stated the defendant awoke and became aggressive with him. Kerling advised the defendant began to grab a hold of him and proceeded to			
13 push him. Kerling stated he attempted to control the defendant who became increasingly more violent and aggressive with him. Deputy Miller asked if			
14 the defendant had punched or kicked him, which Kerling stated he was unsure. Kerling's domestic partner, and the god-father of the defendant,			
15 Lester Euell (W1), contacted the Sheriff's Office for assistance. At this point, the defendant retrieved a set of car keys and attempted to flee the			
NOTICE TO APPEAR MANDATORY APPEARANCE <input type="checkbox"/>		YOU NEED NOT APPEAR IN COURT BUT MUST COMPLY WITH INSTRUCTIONS ON THE REVERSE SIDE OF YOUR COPY <input type="checkbox"/>	
FINE, AND COSTS AMOUNT:			
I AGREE TO APPEAR IN COURT HEREIN TO ANSWER THE OFFENSE CHARGED OR TO PAY THE FINE INDICATED. I UNDERSTAND THAT SHOULD I WILLFULLY FAIL TO APPEAR BEFORE THE COURT AS REQUIRED, OR PAY THE LISTED FINE, I MAY BE HELD IN CONTEMPT OF COURT AND A WARRANT FOR MY ARREST WILL BE ISSUED.			
Signature of Defendant: Hutcherson 11/28/2012 8:30		Signature of Juvenile Parent or Custodian: [Signature]	
Date: 02 day of November 2012		Relationship to Juvenile: [Signature]	
Sworn to and subscribed before me, the undersigned this 02 day of November 2012		I swear/affirm the above statements are correct and true	
Name: [Signature]		Name: [Signature]	
Notary Public <input type="checkbox"/> Law Enforcement or Corrections Officer <input checked="" type="checkbox"/>		OFFICER'S/COMPLAINANT'S SIGNATURE	
Personally Known <input type="checkbox"/> Produced Identification <input type="checkbox"/>		MILLER, DENNIS 7754	
Type of Identification:		NAME (PRINTED) ID NUMBER	
OFFICIAL USE ONLY		Inmate Number & Facility: 00630639	

Filed in Open Court Seventh Judicial Circuit Volusia County, Florida

NOV 02 2012

Narrative Supplement 707-B

Arrest
 Affidavit
 Notice to Appear
 Adult
 Juvenile

Court Case Number:

Defendant (Last) Name: BARRERA-MANSILLA		(First) EDGAR		(Middle) A	Agency Case Number: 120032145
CHARGES		DOMESTIC VIOLENCE? Yes <input checked="" type="checkbox"/>	Attachments: Affidavit(s)? <input type="checkbox"/>	Statement(s) <input type="checkbox"/>	NTA Schedule <input type="checkbox"/> Report <input type="checkbox"/> Traffic infraction(s) <input type="checkbox"/> Total Charges: 5
#4	Charge: Resist Officer with Viol.	FEL <input checked="" type="checkbox"/> MISD <input type="checkbox"/> ORD <input type="checkbox"/>	FS/ORD: 843.01	Citation No.:	Bond: 5,000
#5	Charge: DUI Alcohol or Drugs	FEL <input type="checkbox"/> MISD <input checked="" type="checkbox"/> ORD <input type="checkbox"/>	FS/ORD: 316.193	Citation No.: 4119XFC	Bond: 1,000
#	Charge:	FEL <input type="checkbox"/> MISD <input type="checkbox"/> ORD <input type="checkbox"/>	FS/ORD:	Citation No.:	Bond:

16 residence. Kerling provided Deputy Miller with a sworn written statement detailing the incident.

17

18 Deputy Miller contacted Euell who corroborated Kerling's account of the incident. Euell informed Deputy Miller he was working in his office and heard

19 a commotion in the living room. When Euell went to investigate, he observed the defendant grabbing and pushing Kerling. Euell stated he was unable

20 to assist Kerling due to pre-existing medical conditions and contacted the Sheriff's Office for assistance. Euell provided Deputy Miller with a sworn

21 written statement detailing the incident.

22

23 Deputy Miller observed Kerling had abrasions on his chin and the left side of his nose. Kerling's injuries were photographed and submitted into the

24 District Three evidence locker. Deputy Miller offered Kerling medical assistance, to which he refused. While interviewing Kerling and Euell, Deputy

25 Miller was informed the defendant is the god-son of of Euell and the three reside together as a single family unit at 1539 Valencia Avenue, Daytona

26 Beach. Deputy Miller provided Kerling with a victim's legal rights a remedies packet, for which he signed for. Additionally, Deputy Miller completed a

27 victim's notification card, which was submitted with this report.

28

29 Deputy Miller contacted the defendant who was visibly intoxicated. The defendant informed Deputy Miller he had recently returned home from a night

30 out, consuming alcohol. The defendant further stated he lost control with Kerling. The defendant admitted to pushing and grabbing Kerling. Deputy

31 Miller placed the defendant under arrest.

32

33 Deputy Miller escorted the defendant to his patrol vehicle. While attempting to search the defendant, he continually pulled away and resisted Deputy

34 Miller's efforts. Deputy Miller instructed the defendant multiple times to stop resisting and to comply with his instructions, to which he refused. The

35 defendant continued to pull away and forced his entire weight onto Deputy Miller. As a result of the defendant's actions, Deputy Miller was forced to

36 escort the defendant to the ground. Once on the ground, Deputy Miller was able to complete his search of the defendant.

37

38 Deputy Miller and Deputy Bowen assisted the defendant in standing up and escorted him back to Deputy Miller's patrol vehicle. The defendant was

39 instructed to enter the vehicle, to which he refused to do by not placing his legs into the vehicle. Deputy Miller walked around to the other side of his

40 patrol vehicle in an attempt to help place the defendant fully into the vehicle. At this point, Deputy Miller grabbed a hold of the defendant's shoulder's

41 and Deputy Bowen attempted to place his feet into the patrol vehicle. The defendant began to violently kick Deputy Bowen striking her in the arms

42 and chest. Deputy Miller disengaged from the defendant and retrieved his hobble restraint.

43

44 Deputy Miller attempted to place the defendant's feet into the hobble. Upon doing so, the defendant began to violently kick at Deputy Miller's chest

45 and face. The defendant's kicking struck Deputy Miller in the arms and chest. Deputy Miller ordered the defendant to stop resisting, which he refused

46 to comply with and continued to violently kick at Deputy Miller. Deputy Miller drew his department issued Taser and ordered the defendant to comply

47 or the Taser would be deployed, the defendant continued to resist. Deputy Miller removed the Taser cartridge and deployed a 5 second drive-stun to

48 the side of the defendant's left leg. At the end of the cycle, the defendant continued to resist and kick Deputy Miller. A second drive-stun was

49 deployed to the defendant's stomach and the defendant continued to provide resistance to Deputy Miller by kicking violently. Another cycle was

50 deployed to the defendant's stomach, at the end of the cycle the defendant stopped resisting and allowed Deputy Miller to place his feet into the

51 hobble restraint. Deputy Miller informed Sergeant Smith of the use of force and subsequently he responded to the scene.

52

53 While in the backseat, the defendant continued to kick and bang his head against the door and cage. The defendant was secured in a shoulder

54 restraint to prevent the defendant from injuring himself.

55

56 It should be noted, due to the defendant's violent behavior field sobriety exercises could not be done. The defendant was asked to submit to a breath

57 test to determine its alcohol content, which he refused to do. See Deputy Goff's supplemental report for complete details.

58

59 Based on the statements made and evidence on scene, Deputy Miller determined the defendant willfully and unlawfully touched and struck Kerling,

60 who is 72 years of age, against his will. After being placed under arrest, the defendant willfully, maliciously, and unlawfully battered Deputy Miller and

61 Deputy Bowen who were engaged in the lawful performance of their duties. Additionally, the defendant resisted, obstructed, and opposed Deputy

62 Miller and Deputy Bowen and offered violence in doing so. As such, the defendant was charged with one count of battery on person 65 YOA and

63 older, 2 counts of battery of LEO, one count of resisting with violence, and driving under the influence. The defendant was transported to the branch

64 jail.

Sworn to and subscribed before me, the undersigned this 02 day of November, 2012 Name: <i>[Signature]</i>	I swear/affirm the above statements are correct and true <i>[Signature]</i> OFFICER'S/COMPLAINANT'S SIGNATURE	Right Thumb
Notary Public <input type="checkbox"/> Law Enforcement Officer <input checked="" type="checkbox"/> Personally Known <input type="checkbox"/> Produced Identification <input type="checkbox"/> Type of Identification:	MILLER, DENNIS NAME (PRINTED)	7754 ID NUMBER

Witness/Victim/Evidence Form 707-A

Arrest
 Affidavit
 Notice to Appear
 Adult
 Juvenile

Court Case Number: 120032145

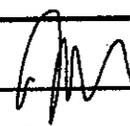
Page # 3 of 3

Defendant (Last) Name: BARRERA-MANSILLA		(First) EDGAR		(Middle) A	Agency Case Number: 120032145					
Name: (Last) 1 KERLING		(First) ALBERT		(Middle) J	Vic <input type="checkbox"/> Wlt <input type="checkbox"/>	Race: W	Sex: M <input checked="" type="checkbox"/> F <input type="checkbox"/>	Age: 72	DOB: 08-08-1940	SSN:
Address (#, Street, City, State): 1539 VALENCIA AVENUE DAYTONA BEACH FL					Zip: 32117	Home: Phone: (386) 852-6259		Statement: <input type="checkbox"/> Yes <input type="checkbox"/> No		
Bus/School Address:					Zip:		Home: Phone:		Bus: Phone:	
Relative/Contact Name					Relative/Contact Address:		Phone:			
Name: (Last) 1 EUELL		(First) LESTER		(Middle) A	Vic <input checked="" type="checkbox"/> Wlt <input type="checkbox"/>	Race: W	Sex: M <input checked="" type="checkbox"/> F <input type="checkbox"/>	Age: 57	DOB: 10-31-1955	SSN:
Address (#, Street, City, State): 1539 VALENCIA AVENUE DAYTONA BEACH FL					Zip: 32117	Home: Phone: (386) 852-0085		Statement: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
Bus/School Address:					Zip:		Home: Phone:		Bus: Phone:	
Relative/Contact Name					Relative/Contact Address:		Phone:			
Name: (Last)		(First)		(Middle)	Vic <input type="checkbox"/> Wlt <input type="checkbox"/>	Race:	Sex: M <input type="checkbox"/> F <input type="checkbox"/>	Age:	DOB:	SSN:
Address (#, Street, City, State):					Zip:	Home: Phone:		Statement: <input type="checkbox"/> Yes <input type="checkbox"/> No		
Bus/School Address:					Zip:		Home: Phone:		Bus: Phone:	
Relative/Contact Name					Relative/Contact Address:		Phone:			
Name: (Last)		(First)		(Middle)	Vic <input type="checkbox"/> Wlt <input type="checkbox"/>	Race:	Sex: M <input type="checkbox"/> F <input type="checkbox"/>	Age:	DOB:	SSN:
Address (#, Street, City, State):					Zip:	Home: Phone:		Statement: <input type="checkbox"/> Yes <input type="checkbox"/> No		
Bus/School Address:					Zip:		Home: Phone:		Bus: Phone:	
Relative/Contact Name					Relative/Contact Address:		Phone:			
Name: (Last)		(First)		(Middle)	Vic <input type="checkbox"/> Wlt <input type="checkbox"/>	Race:	Sex: M <input type="checkbox"/> F <input type="checkbox"/>	Age:	DOB:	SSN:
Address (#, Street, City, State):					Zip:	Home: Phone:		Statement: <input type="checkbox"/> Yes <input type="checkbox"/> No		
Bus/School Address:					Zip:		Home: Phone:		Bus: Phone:	
Relative/Contact Name					Relative/Contact Address:		Phone:			
Name: (Last)		(First)		(Middle)	Vic <input type="checkbox"/> Wlt <input type="checkbox"/>	Race:	Sex: M <input type="checkbox"/> F <input type="checkbox"/>	Age:	DOB:	SSN:
Address (#, Street, City, State):					Zip:	Home: Phone:		Statement: <input type="checkbox"/> Yes <input type="checkbox"/> No		
Bus/School Address:					Zip:		Home: Phone:		Bus: Phone:	
Relative/Contact Name					Relative/Contact Address:		Phone:			

EVIDENCE COLLECTED

Description of Evidence	Date Recovered	Model Serial/I.D. Number	Drug Amount
Owner Name (Last) (First) (Address)		(Phone)	Value
Description of Evidence	Date Recovered	Model Serial/I.D. Number	Drug Amount
Owner Name (Last) (First) (Address)		(Phone)	Value
Description of Evidence	Date Recovered	Model Serial/I.D. Number	Drug Amount
Description of Evidence	Date Recovered	Model Serial/I.D. Number	Drug Amount
Description of Evidence	Date Recovered	Model Serial/I.D. Number	Drug Amount
Description of Evidence	Date Recovered	Model Serial/I.D. Number	Drug Amount
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Description of Evidence	Date Recovered	Model Serial/I.D. Number	Drug Amount
Description of Evidence	Date Recovered	Model Serial/I.D. Number	Drug Amount
Description of Evidence	Date Recovered	Model Serial/I.D. Number	Drug Amount
Description of Evidence	Date Recovered	Model Serial/I.D. Number	Drug Amount

I certify that the foregoing is a complete list of witnesses/victims & evidence known to me.

MILLER, DENNIS  7754 VCSO
 Investigating Officer ID Number Agency

CLASSIFICATION: FELONY

STATE OF FLORIDA

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT, IN AND FOR VOLUSIA COUNTY, FLORIDA, IN THE YEAR TWO THOUSAND TWELVE

VS.

EDGAR A BARRERA
W/M; DOB: 03/31/1982 SS# 603-96-7225

CASE NO: 2012-36293CFAES
AGENCY: VCSO/120032145

INFORMATION

CHARGE(S):

- I) RESIST ARREST WITH VIOLENCE
- II) DRIVING UNDER THE INFLUENCE

R.J. LARIZZA, State Attorney for the Seventh Judicial Circuit of the State of Florida and as such prosecuting attorney for this Court, in the name of and by the authority of the State of Florida charges that:

COUNT I: EDGAR A BARRERA, on or about November 1, 2012, in the County of VOLUSIA and State of Florida, did knowingly and intentionally resist, obstruct or oppose Deputy Miller and/or Deputy Bowne, a law enforcement officer of the Volusia County Sheriff's Office, in the execution of a legal process or in the lawful execution of a legal duty, by offering or doing violence to the person of such officer, contrary to Florida Statute 843.01. (3 DEG FEL)

COUNT II: IN THAT EDGAR A BARRERA on or about November 1, 2012, in the County of VOLUSIA and State of Florida, did drive or was in actual physical control of a vehicle, while under the influence of alcoholic beverages or chemical substances as set forth in Florida Statute 877.111, or a controlled substance as set forth in Florida Statute 893 or any combination thereof, and was affected to the extent that normal faculties were impaired; or while having a blood or breath alcohol level of .08 or higher, contrary to Florida Statute 316.193(1). (1st DEGREE MISD)

FOR THE STATE ATTORNEY

Stefanie Presnell

STEFANIE PRESNELL
ASSISTANT STATE ATTORNEY
SEVENTH JUDICIAL CIRCUIT OF THE
STATE OF FLORIDA
BAR NUMBER: 0056818

COUNTY OF VOLUSIA

STATE OF FLORIDA

Personally appeared before me STEFANIE PRESNELL, Assistant State Attorney, for the Seventh Judicial Circuit of the State of Florida, known to me to be the foregoing prosecuting officer, who being duly sworn, says that the allegations set forth in the foregoing information are based upon facts that have been sworn to as true, and which, if true, would constitute the offense therein charged. Subscribed in good faith. Said facts based on testimony of material witnesses.

SWORN to and subscribed before me this 21 day of November, 2012.

Submitted to the Clerk of the CIRCUIT Court, Seventh Judicial Circuit, in and For VOLUSIA County, Florida, on the 21 day of November, 2012.

Nancy L. Colee
NOTARY PUBLIC AT LARGE
STATE OF FLORIDA



CLERK OF THE CIRCUIT COURT VOLUSIA
2012 NOV 26 AM 11:35

FILED

INFO

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

STEPHEN A. WESTLAKE,)	
)	
Petitioner,)	Cancellation No. 92/052,260
)	
EDGAR ALEXANDER BARRERA,)	(Serial No. 77/378,015)
)	
Respondent.)	

ATTORNEY AFFIRMATION

Mark Levy, affirming under the penalties of perjury pursuant to New York CPLR §2106 and FRCP 11, states the following is true:

1. I, along with Kevin F. Guyette, represent the petitioner, Stephen A. Westlake in this action for cancellation and I make this affirmation in support of the instant application for sanctions pursuant to Rule 527 and FRCP 37(b)(2) and seek an order granting default judgment.
2. The instant petition was filed on March 29, 2010; and amended on September 15, 2010. In over three years since the amended petition was filed, the respondent has sought and received numerous extensions of time, alleging a medical condition.
3. As stated in the accompanying Attorney Affirmation by Kevin F. Guyette, Esq., the petitioner has continued to publish the National Police Gazette magazine and there has been no such other activity other than the petitioner's.

4. The petitioner Stephen A. Westlake has been harmed by this Honorable Board's failure to grant Default Judgment on behalf of the petitioner, as the delay of reinstatement of his registration has resulted in uncertainty, reducing petitioner from obtaining capital and expanding both the size of his publication and its distribution.

5. The petitioner believes respondent Edgar Alexander Barrera's activities and inaction are contrary to public policy, depriving petitioner from the lawful registration of his mark.

WHEREFORE, I respectfully request that this Board enter an Order Granting Default Judgment on behalf of the Petitioner, Stephen A. Westlake.

Respectfully submitted,

Dated: October 31, 2013

By:



Mark Levy
HINMAN HOWARD & KATTELL, LLP
Attorney for Petitioner
80 Exchange Street
Binghamton, NY 13901
Tel: (607) 231-6830

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

STEPHEN A. WESTLAKE,)	
)	
Petitioner,)	Cancellation No. 92/052,260
)	(Serial No. 77/378,015)
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2. The instant petition was filed on March 29, 2010; and amended on September 15, 2010. Since that time, the respondent has sought and received numerous extensions of time, alleging a medical condition.
3. The first such request was on October 8, 2010, or three full years ago.
4. During this time, this action has not moved forward. Specifically, the respondent has yet to provide initial disclosures.
5. I respectfully submit that the real reason he has not submitted initial disclosures is that because to do so would betray the fact that his position is indefensible.
6. My co-counsel, Mark Levy and I stopped responding to all the requests for extensions of time because it was costing our client money each time.

7. I would note that in one such response that we did make, we noted that the alleged condition, pancreatitis, can be treated with a few days stay in the hospital with intravenous fluids, antibiotics, and medication to relieve pain. Acute pancreatitis resolves itself within a few days; however, it somehow lingered in the respondent for in excess of 24 months.

8. I would further note that while Mr. Barrera alleges that he does not have the physical ability or energy to submit initial disclosures or cooperate with his attorney when he was represented, he did find the time, energy, and motivation to exert himself to respond to the Board concerning our reasonable objections with numerous pages of single-spaced type.

9. I respectfully submit that all of the excuses put forth by the respondent are complete and utter lies, obfuscations and nonsense. If he really, truly had any kind of a case to present he clearly would have submitted initial disclosures and scheduled dates and times for response to take an active part in this litigation.

10. Because so much time has passed and because there has been an utter failure to participate in the litigation, I respectfully submit that the Board is well within its discretion to grant a motion to give judgment to the petitioner on this basis alone. Rule 527.01 (a) Failure to Comply with Board Discovery Order. Provides in pertinent part: When a party fails to participate in a required discovery conference, or if a party fails to comply with an order of the Trademark Trial and Appeal Board relating to disclosure or discovery, including a protective Order, the Board may make any appropriate Order, including those provided in 37(b)(2) of the Federal Rules of Civil Procedure... The Board may impose against a party any of the sanctions provided in [FRCP] 37(b)(2).

In the comment section of this rule it is provided: The sanctions which may be entered by the Board include, *inter alia*, striking all or part of the pleadings of the disobedient party; refusing to allow the disobedient party to support or oppose designated claims or defense; prohibiting the disobedient party from introducing designated matters of evidence; and entering judgment against disobedient party. Default judgment is a harsh remedy, but may be justified where no less drastic remedy would be effective and **there is a strong showing of willful evasion** (emphasis added). (*See Benedict v. Super Bakery, Inc.*, 665 F.3d 1263, 101 USPQ2d 1089 (Fed. Cir. 2011) (affirming Board's entry of judgment as a discovery sanction for repeated failures to comply with Board's reasonable orders) *aff'g* 96 USPQ2d 1134 (TTAB 2010) *MHW Ltd. v. Simex, Aussenhandelsgesellschaft Savelsberg KG*, 59 USPQ2d 1477, 1478-79 (TTAB 2000) (Repeated failure to comply with orders and unpersuasive reasons for delay resulted in entry of judgment). FRCP 37(b)(2), regarding sanctions for failure to provide discovery provides in pertinent part: The Court where the action is pending may issue further just orders which include the following: (i) Directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims; (ii) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence; (iii) striking pleadings in whole or in part; (iv) staying further proceedings until the order is obeyed; (v) dismissing the action or proceeding in whole or part; (vi) rendering a default judgment against the disobedient party; or (vii) treating as contempt of court the failure to obey any order except an order to submit to a physical or mental evaluation.

The Board does not have the power to hold any person in contempt or award expenses to any party.

11. I now turn to the facts which are the basis of this dispute.

12. As stated, under oath by our client: On April 7, 2007, no one was using the Capital National, Capital Police, Capital Gazette mark in commerce in any channel; no periodical under that name and/or mark had been published since January, 1977. Our client, Stephen Westlake, has done thorough searches and states without any challenge that he has been using the National Police Gazette name and mark continuously in various channels of commerce since April 8, 2007.

13. Respondent should not now be heard to challenge entry of a default judgment because he has not cooperated in any way for three years.

14. I respectfully submit that he is merely trying to drag out this litigation because he has no facts to rely upon and he is merely trying to drain the petitioner of financial resources. He has clearly been evasive and has endeavored to deceive this Board.

15. The petitioner has continued to publish on the National Police Gazette and there has been no such other activity other than the petitioner's.

16. While the respondent, Edgar Alexander Barrera, states that he has a power of attorney, he has yet to show any proof to this honorable Board.

17. Despite the fact that Barrera has alleged under oath that he is too ill to participate in this litigation, during the times that he was making these representations to the Board, he has been arrested on numerous occasions. On June 12, 2012, he allegedly was intoxicated, entered his residence through a window, tried to break down a door and committed battery and resisting arrest. Clearly, if he is able to engage in climbing

through a window, attempting to break down a door, commit battery, and resist arrest against numerous police officers, he certainly had the physical strength and energy to participate in providing initial disclosures.

18. On November 11, 2012, he was allegedly intoxicated and became involved in a shoving match with another individual. He also allegedly resisted arrest, to the point where he became physically violent even after being tasered. He was charged with battery.

19. He was arrested on June 3, 2013, again during the time that he represented to the Board that he is too ill to participate in litigation, he consumed alcohol to the point where he was impaired, got behind the wheel of a car, drove on the highway, and was pulled over. He was clearly not too ill from his pancreatitis to consume alcohol to the point where he was impaired and thereafter drive a vehicle.

20. No mention has been made in any of the police reports regarding Barrera's alleged ill health.

21. During all this the time he has been representing to the Board that he is too ill to participate in his case or provide initial disclosures, yet he has gotten intoxicated, engaged in assaultive conduct and resisted arrest on numerous occasions where police have been involved.

22. It is clear that the respondent has misled this Board to a great degree as to his physical condition and with respect to his ability to participate in the on-going litigation.

23. Because his misrepresentations to the Board are so egregious and served only to stall and delay these proceedings, it is respectfully submitted that the Board really has no other choice but to grant a default judgment in the instant case.

24. Logically, a default judgment is the only sanction which makes sense;

- Striking all or part of respondent's pleadings
- Refusing to allow respondent to support his claim.
- Prohibiting respondent from introducing evidence (whatever it may be)

All result in respondent being unable to present a case, and are therefore tantamount to a default.

While default judgment would be considered a harsh remedy it is respectfully submitted that there has been a strong showing of willful evasion given the respondent's conduct and there is no other remedy that would be effective in the instant case. We have not even been able to conduct any kind of discovery because we have not gotten past the initial disclosure phase from the respondent.

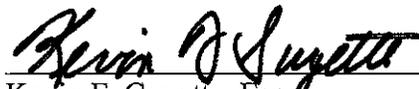
Since the Board cannot hold the respondent in contempt, the only real sanction with any meaning in the instant matter would be to strike respondent's pleading and enter default judgment on behalf of Petitioner.

His misrepresentations are an affront to this Board, and serve only to thwart justice.

WHEREFORE, I respectfully request that this Board enter an Order Granting Default Judgment on behalf of the Petitioner, Stephen A. Westlake.

Dated: October 11, 2013

Respectfully submitted by:



Kevin F. Guyette, Esq.
Law Offices of Kevin F. Guyette
Attorney for Petitioner, Stephen A. Westlake
136 Court Street
Binghamton, New York 13901
(607) 773-0758