

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SIMON V. KINSELLA

Plaintiff,

v.

BUREAU OF OCEAN ENERGY MANAGEMENT
and in their official capacities, Director ELIZABETH
KLEIN,¹ Environment Branch for Renewable
Energy (“OREP”) Chief MICHELLE MORIN,
OREP Program Manager JAMES F. BENNETT,
OREP Environmental Studies Chief MARY
BOATMAN, Economist EMMA CHAIKEN,
Economist MARK JENSEN, Biologist BRIAN
HOOKER, and JENNIFER DRAHER; and DEB
HAALAND, Secretary of the Interior, U.S.
Department of the Interior; LAURA DANIELS-
DAVIS, in her official capacity as Principal Deputy
Assistant Secretary, Land and Mineral Management;
and MICHAEL S. REGAN, Administrator, U.S.
Environmental Protection Agency;

Defendants,

and

SOUTH FORK WIND, LLC,

Defendant-Internevor.

Case No. 2:23-cv-02915-FB-ST

AFFIDAVIT OF SIMON V. KINSELLA
IN SUPPORT OF REQUEST FOR A
CERTIFICATE OF DEFAULT

TO: BRENNAN B. MAHONEY
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

I, Simon V. Kinsella, Plaintiff *pro se*, being duly sworn, say under penalty of perjury:

1. I am a resident of Wainscott in the Town of East Hampton, State of New York.
2. I submit this affidavit pursuant to Rule 55(a) of the Federal Rules of Civil Procedure in support of my request for a Certificate of Default against—

¹ U.S. Bureau of Ocean Energy Management (“BOEM”) Director was Amanda Lefton when filing the complaint on July 20, 2022, but Ms. Lefton resigned effective January 19, 2023.

- a. Defendant Bureau of Ocean Energy Management (“BOEM”) and named BOEM officials in the caption (above); Defendant Deb Haaland, in her official capacity as Secretary of the Interior, U.S. Department of the Interior (“DOI”); Defendant Laura Daniels Davis, in her official capacity as Principal Deputy Assistant Secretary, Land and Mineral Management; Defendant Michael S. Regan, in his official capacity as Administrator, U.S. Environmental Protection Agency (“EPA”) (collectively “Federal Defendants”); and
 - b. Defendant-Internevor South Fork Wind LLC (“South Fork Wind”).
3. Neither Federal Defendants nor South Fork Wind are infants or incompetent persons.
 4. Inasmuch as Federal Defendants are government agencies or employed by said agencies, they are not in military service. Defendant-Internevor South Fork Wind is not in military service.
 5. On July 20, 2022, Plaintiff filed a (FOIA)² Complaint against Defendants BOEM, DOI, and EPA (D.D.C., 1:22-cv-02147, ECF 1).
 6. The pleading to which no response has been made was served according to Rule 4 of the Federal Rules of Civil Procedure, as follows—
 - a. Summons and Complaint were sent (and return receipt acknowledged) by the U.S. Attorney General (Department of Justice Department), U.S. Attorney for the District of Columbia, U.S. Department of the Interior, U.S. Bureau of Ocean Energy Management, and U.S. Environmental Protection Agency (*see* Exhibit A).
 - b. South Fork Wind was served notice of the Complaint (*see* Exhibit B, at 1-6, PDF 2-7).

² Freedom of Information Act.

7. The U.S. District Court for the District of Columbia ordered Federal Defendants “to file its responsive pleading to the Complaint in this lawsuit ... *thirty days after ... the case is transferred and a new docket number and judge is assigned* ... Signed by Judge Jia M. Cobb on 9/13/2022” (emphasis added). *See* Exhibit C, Civil Docket (MINUTE ORDER, at 4, PDF 5).
8. On November 2, 2022, Plaintiff filed (as of right) First Amended Complaint against Federal Defendants (D.D.C., 1:22-cv-02147, ECF 34-2).
9. On November 7, 2022, the district court for the District of Columbia granted South Fork Wind’s Motion to Intervene and “ORDERED that Intervenor-Defendant South Fork Wind, LLC shall file its Answer or other responsive pleading on the same date as Federal Defendants” (i.e., thirty days after the case is transferred and a new docket number and judge is assigned)(*see* ¶ 7 above). *See* Exhibit D (at 1, PDF 2).
10. On November 9, 2022, during a hearing, the district court for the District of Columbia accepted Plaintiff’s First Amended Complaint— “I will grant ... Mr. Kinsella’s motion to amend the complaint, which he was free to do as a matter of course at this stage of the proceedings ... when we are referring ... to any allegations, we are all talking about the same operative complaint.” *See* November 9 Hearing Tr. (D.C. Cir., No. 22-5317, Doc. 1994062-11, at 2:20-25 and 21:1-2). *Also, see* Exhibit C (MINUTE ORDER, 11/10/2022, at 7, PDF 8).
11. On May 17, 2023, the Court of Appeals for the D.C. Circuit (No. 22-5317, Doc. 1999608) transferred the case and “ORDERED that the petition for writ of mandamus be denied. The district court did not abuse its discretion in transferring petitioner’s case to

the Eastern District of New York.” *See* Exhibit E (D.C. Cir., No. 22-5317, Doc. 1999608).

12. On April 19, 2023, “[t]he case of **Kinsella v. Bureau of Ocean Energy Management et al**, [was] transferred from **U.S. District Court, District of Columbia** to the Eastern District of New York. The new case number is **23-cv-2915-GRB-SIL**.” *See* Exhibit F (at PDF 5).
13. On April 24, 2023, “District of Columbia Case number 1:22-cv-02147, **Kinsella v. Bureau Of Ocean Energy Management et al**, was transferred to The Eastern District of New York in error. E.D.N.Y. case number 23-cv-02915-GRB-SIL has been administratively closed. (AC)” (*id.*).
14. On April 25, 2023, according to an order, the “[c]ase [was] reassigned to Judge Frederic Block and Magistrate Judge Steven Tiscione” (*id.*).
15. On May 1, 2023, the case in the E.D.N.Y. is reopened— “ELECTRONIC ORDER REOPENING CASE: Ordered by Judge Frederic Block on 5/1/2023. (MI) Modified on 5/18/2023” (*id.*).
16. As of July 10, 2023, Federal Defendants have *not* filed answers to Plaintiff’s Complaint filed almost a year ago (on July 20, 2022)(*see* D.D.C., 1:22-cv-02147, ECF 1) and have *not* responded to Plaintiff’s cross-Motion for Partial Summary Judgment and Statement of (eighty-nine) Material Facts where there is no genuine dispute filed over nine months ago (on September 26, 2022)(*id.*, ECF 21). Neither Federal Defendants *nor* South Fork Wind filed answers to the First Amended Complaint that Plaintiff had filed over eight months ago (on November 2, 2022)(*id.*, ECF 34-2).

17. Neither Federal Defendants *nor* South Fork Wind filed a pleading or otherwise asserted a defense (Fed. R. Civ. P. 12(b)), and the time for filing has expired.

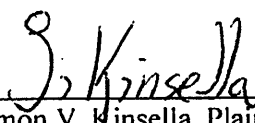
18. Federal Defendants are in violation of an order of the U.S. District Court for the District of Columbia issued by District Judge Jia M. Cobb on September 13, 2022 (*see* ¶ 7 above), and South Fork Wind is in violation of an order issued on November 7, 2022 (*see* ¶ 9 above).

19. Neither Federal Defendants *nor* South Fork Wind has requested a further extension.

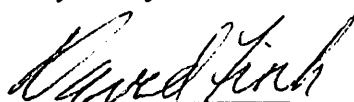
WHEREFORE, Plaintiff requests that the default of Federal Defendants and Defendant-Intervenor South Fork Wind LLC be noted and a certificate of default issued.

I declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge, information, and belief.

Dated: July 11, 2023


Simon V. Kinsella, Plaintiff *Pro Se*
P.O. Box 792, Wainscott, NY 11975
Tel: (631) 903-9154
Si@oswSouthFork.Info

Sworn to before me this
11th day of July 2023


David Fink, Notary Public

DAVID FINK
Notary Public, State of New York
No. 4526132
Qualified in New York County
Commission Expires February 28, 2025

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Dated: July 11, 2023

Simon V. Kinsella, Plaintiff *Pro Se*
P.O. Box 792, Wainscott, NY 11975
Tel: (631) 903-9154
Si@oswSouthFork.Info

Sworn to before me this
11th day of July 2023

David Fink, Notary Public