

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

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NANCY SHUNKUEN NG, individually and
derivatively on behalf of ASQUARED GROUP, INC.
as Successor in Interest to KYOTO
RESTAURANT INC. and KYOTO DINING
GROUP INC.,

Index No.: 714168/16

Plaintiff,

-against-

**AFFIRMATION IN
SUPPORT**

ASQUARED GROUP, INC. as Successor in Interest to
KYOTO RESTAURANT INC. and KYOTO DINING
GROUP INC., XYZ CORP. a fictitious corporation
name intending same to be a successor in interest to
ASQUARED GROUP, INC d/b/a MIRA SUSHI a/k/a
MIRA SUSHI & IZAKAYA, and ANDY LEE,

Defendants.

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CHRISTOPHER M. LYNCH, an attorney duly admitted to practice law before the Courts
of the State of New York, hereby affirms the following under penalty of perjury:

1. I am an associate in the law firm of WHITE, CIRRITO & NALLY, LLP,
attorneys for the Plaintiff herein, and, as such, am fully familiar with the facts and circumstances
of this matter.

2. I submit this Affirmation in Support of Plaintiff’s Motion for a Default Judgment
against the Defendants ASQUARED GROUP, INC. as Successor in Interest to KYOTO
RESTAURANT INC. and KYOTO DINING GROUP INC. (“ASQUARED GROUP”), XYZ
CORP. a fictitious corporation name intending same to be a successor in interest to ASQUARED
GROUP, INC d/b/a MIRA SUSHI a/k/a MIRA SUSHI & IZAKAYA (“XYZ CORP.”), and
ANDY LEE based upon their failure to answer or otherwise appear in this action within the time
allowed, and for other related relief.

3. That, pursuant to CPLR §3215(f), Plaintiff submits its Verified Complaint, verified by NANCY SHUNKUEN NG, to “be used as the affidavit of the facts constituting the claim and the amount due.” (Exhibit A, Verified Complaint).

BACKGROUND AND PROCEDURAL HISTORY

4. Eddie Choi, Andy Lee and Sau Lai Chan formed a partnership (“Kyoto Partnership”) on October 10, 2004, to run a Japanese restaurant located at 153-11 Union Turnpike, Flushing, New York (“Restaurant”). A copy of the Kyoto Partnership agreement is annexed to the Verified Complaint as Exhibit “A” thereto (tabbed as Exhibit ‘1’ to the hard-copy of this motion).

5. Based upon his contribution of \$67,500.00 to the partnership, Eddie Choi held a twenty-five (25%) percent interest in the partnership. The Plaintiff is Eddie Choi’s mother.

6. Thereafter, in or about February 19, 2009, the parties formed KYOTO DINING GROUP, INC. This corporation was formed to operate a new restaurant located at 153-15 Union Turnpike, Flushing, New York (“New Restaurant”) next door to the Restaurant.

7. Per the shareholder agreement executed on April 21, 2010, Plaintiff is a twenty-five (25%) percent shareholder of KYOTO DINING GROUP, INC.

8. The Kyoto Partnership then converted into a corporation KYOTO RESTAURANT INC., which incorporated on January 7, 2010, and continued the operation of the Restaurant. Per the shareholder agreement executed on April 21, 2010, Plaintiff is a twenty-five (25%) percent shareholder of KYOTO RESTAURANT, INC.

9. The corporations operated the restaurants and Plaintiff would receive statements as a shareholder. The statements stopped in January, 2015. When the Plaintiff confronted the seventy-five (75%) percent shareholder, Andy Lee, he told Plaintiff that he was being sued by employees. He later told Plaintiff that the restaurants were not making money.

10. Upon information and belief, the restaurant has had a gross revenue in excess of \$200,000 per/month for the past three (3) years and remains exceedingly profitable.

11. Plaintiff learned that in April, 2013, Andy Lee formed a corporation ASQUARED GROUP, INC. A copy of the Secretary of State entity information for ASQUARED GROUP, INC. is annexed to the Verified Complaint as Exhibit "B" (tabbed as Exhibit '2' to the hard-copy of this motion).

12. ASQUARED GROUP, INC. is and has been performing the exact same function as KYOTO RESTAURANT, INC. and KYOTO DINING GROUP, INC. were, i.e. the operation of the restaurants. Andy Lee simply switched the operation of the restaurants into the name of this new corporation, ASQUARED GROUP, INC., so that he could freeze out the Plaintiff, a twenty-five (25%) percent shareholder of each of KYOTO RESTAURANT, INC. and KYOTO DINING GROUP, INC. (collectively "KYOTO Corporations").

13. Plaintiff was never notified of any sale of the KYOTO Corporations' assets, or of a transfer of any interest of the KYOTO Corporations. Plaintiff was never notified of any vote or meeting to be held regarding transferring the KYOTO Corporations' assets.

14. Upon review of the Secretary of State's Corporate Entity database, Plaintiff learned that Andy Lee had dissolved KYOTO DINING GROUP, INC. on January 15, 2014, and had dissolved KYOTO RESTAURANT, INC. on February 20, 2015. Plaintiff was never notified that the corporations of which she is a twenty-five (25%) percent shareholder were being dissolved, nor did Plaintiff receive anything related to any winding down of the KYOTO Corporations which may have taken place.

15. ASQUARED GROUP, INC. is, for all intents and purposes, simply a continuation of the KYOTO Corporations under a different name, the only difference being that Plaintiff has been frozen out of the operation of the corporation.

16. The corporate books and records of ASQUARED and the KYOTO Corporations are under the exclusive care and control of Andy Lee and upon information and belief are maintained at the corporate offices located at 153-11 Union Turnpike, Flushing, New York 11367.

17. The Plaintiff has requested access to the books and records of the ASQUARED and the KYOTO Corporations but Andy Lee has refused. These requests have been refused with no further explanation or communication.

18. Upon information and belief, Defendant ANDY LEE has transferred the Restaurant into the name of a different entity and has changed the name of the Restaurant to Mira Sushi a/k/a Mira Sushi & Izakaya in an attempt to further distance himself and the Restaurant from Plaintiff.

19. The Plaintiff commenced this action with the electronic filing of the Summons and Verified Complaint on November 28, 2016 (Exhibit A, Verified Complaint).

20. Defendant ASQUARED GROUP INC. was served with the Summons and Verified Complaint and Notice of Commencement pursuant to Business Corporation Law §306 by service upon the Secretary of State on December 9, 2016. A copy of the Affidavit of Service of the Summons and Verified Complaint upon ASQUARED GROUP INC. is annexed hereto as Exhibit "B". ASQUARED GROUP INC. had until January 8, 2017 to answer, make a motion or otherwise respond to the Plaintiff's Verified Complaint (BCL §306; CPLR 320).

21. Defendant XYZ CORP. was served with the Summons and Verified Complaint and Notice of Commencement pursuant to CPLR §311(a)(1) via service upon manager Eugene Tan, a person authorized to accept service, and had until January 4, 2017 to answer, make a motion or otherwise respond to the Plaintiff's Verified Complaint (CPLR §311[a][1]; Rule 320). Annexed hereto as Exhibit "C" is a copy of the Affidavit of Service of the Summons and Complaint upon XYZ CORP.

22. Defendant ANDY LEE was served with the Summons and Verified Complaint and Notice of Commencement pursuant to CPLR §308(2) via delivery to a person of suitable age and discretion at the Defendant's place of residence on December 12, 2016, with a follow up mailing made on December 16, 2016, thus service was complete on December 26, 2016. Defendant ANDY LEE had until January 25, 2017 to answer, make a motion or otherwise respond to the Plaintiff's Verified Complaint (CPLR §308[2]; Rule 320[a]). A copy of the Affidavit of Service of the Summons and Complaint upon Defendant ANDY LEE is annexed hereto as Exhibit "D".

23. On December 21, 2017, Plaintiff's counsel mailed to each Defendant by first class mail, in an envelope marked personal and confidential that bore no indication it was sent by an attorney or concerned an alleged debt, a copy of the Summons and Verified Complaint filed in this action, pursuant to CPLR §3215(g). A copy of the letter that accompanied the Summons and Verified Complaint, and an affidavit of service evidencing the mailing thereof, is annexed hereto as Exhibit "E".

24. That Plaintiff is entitled to a default judgment as against all Defendants because said parties were properly served with the Summons and Verified Complaint in the within action and have failed to appear, answer, move or otherwise respond to the Verified Complaint. Nor are any of the Defendants entitled to an extension of time to answer, as Defendants lack a reasonable excuse for the default in answering and a meritorious defense to the Plaintiff's claims. See Swedbank, AB v. Hale Ave. Borrower, LLC, 89 A.D.3d 922, 932 N.Y.S.2d 540 (2 Dept., 2011).

25. All proceedings herein have been in accordance with the Rules and Practices of this Court.

26. Since the filing of the Summons and Verified Complaint of this action, the Verified Complaint herein has not been amended so as to make any new parties to the action.

27. None of the Defendants in this action are infants, incompetents, absentees and all proceedings heretofore had herein have been wholly regular.

28. No previous application has been made for the relief requested herein.

WHEREFORE, the Plaintiff's request for an Order granting a default judgment as against Defendants for their failure to answer, move or otherwise respond to the Verified Complaint should be granted, and the Court should further order any other relief which seems just and equitable, including but not limited to ordering an Inquest on Damages be held.

Duly affirmed this 21st day of December, 2017.

/s/Christopher M. Lynch, Esq.
CHRISTOPHER M. LYNCH, ESQ.