

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD

GREGORY SAUNDERS,

Plaintiffs,

v.

CIVIL ACTION No. 1:23-00686

JAMES E. MULLENS, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

Pending before the court is a motion to extend time to file answer filed by defendant James E. Mullens, filed on January 18, 2024. See ECF No. 14. The same day defendant's motion was filed, the Clerk filed a Notice to Counsel of Failure to Answer Within Appropriate Time Frame alerting counsel to Mullens's failure to answer. See ECF No. 15. On January 23, 2024, plaintiff filed a "Motion for Default Judgment" asking for a default judgment against Mullens but referencing Federal Rule of Civil Procedure 55(a) which governs the entry of default. See ECF No. 16. A few days later, on January 26, 2024, Mullens filed a response to both the Notice of Failure to Answer and Motion for Default Judgment "requesting to appeal this decision made by the court." ECF No. 18.

Pursuant to Federal Rule of Civil Procedure 6(b)(1)(B), "[w]hen an act may or must be done within a specified time, the court may, for good cause, extend the time . . . on motion made

after the time has expired if the party failed to act because of excusable neglect.” In his motion to extend the time to answer the complaint, Mullens explains that he needs additional time to retain an attorney and that he has been attempting to do so. The court finds that Mullens has shown good cause for an extension of time to answer and that his failure to seek such an extension before the time to answer expired is excusable. Therefore, Mullens’s motion is **GRANTED** and he has until **March 11, 2024**, to file an Answer or otherwise respond to the Complaint. To the extent, plaintiff sought a “default judgment” against Mullens, that motion is **DENIED** and the court **SETS ASIDE** the Clerk’s entry of default.

The Clerk is directed to send copies of this Order to all counsel of record and unrepresented parties.

IT IS SO ORDERED this 15th day of February, 2024.

ENTER:



David A. Faber
Senior United States District Judge