

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

EQUAL EMPLOYMENT)
OPPORTUNITY COMMISSION,)
)
Plaintiff,)
)
v.)
)
JOE RYAN ENTERPRISES, INC.,)
)
)
Defendant.)

CASE NO. 3:11-cv-795-MEF
(WO - Do Not Publish)

ORDER

Before the Court is Plaintiff’s Motion to Dismiss Defendant’s Counterclaim in Defendant’s Second Amended Answer (Doc. #26) and Supporting Memorandum of Law (Doc. #27). Specifically, Plaintiff seeks to dismiss the counterclaim asserted in Defendant’s Second Amended Answer on the basis that: (1) it disregards the Court’s instructions in its July 9, 2012 Order concerning the obligations of Defendant’s counsel in filing any counterclaims (Doc. #24); (2) it fails to state a claim upon which relief can be granted; (3) this Court lacks subject matter jurisdiction over the counterclaim; and (4) Defendant failed to assert the counterclaim in compliance with Rules 9(a)(1)(A) and (b) of the Federal Rules of Civil Procedure. (Doc. #26.)

On September 12, 2012, Defendant was ordered to file its response, if any, to Plaintiff’s motion no later than October 2, 2012. (Doc. #28.) This deadline came and passed, however, without Defendant filing any response. Instead, on October 9, 2012, a **week** after

its October 2, 2012 deadline, Defendant filed its Response to Plaintiff's Motion to Dismiss Counterclaim in Second Amended Answer. (Doc. #29.) Notably, Defendant did not file a motion seeking the Court's permission to file its response out of time. Nor did Defendant provide the Court with any good cause as to why its response was filed out of time. Even more confusing is the fact that Defendant prepared and filed a four-page response in opposition to Plaintiff's motion, with multiple exhibits, only to withdraw Defendant's counterclaim against "certain (unnamed) employees of EEOC" in the final sentence of its response. (Doc. #29) (alterations to original).

Having considered the foregoing, Defendant is hereby ORDERED to provide the Court with written clarification **on or before Monday, October 29, 2012**, as to whether Defendant's intention is to withdraw the counterclaim it asserted against Plaintiff in its Second Amended Answer in its entirety. If Defendant does not intend to withdraw the counterclaim it asserted against Plaintiff in its Second Amended Answer in its entirety, Defendant is further ORDERED to show cause **on or before Monday, October 29, 2012**, as to why Defendant's Response to Plaintiff's Motion to Dismiss Counterclaim in Second Amended Answer (Doc. #29) should not be stricken from the record as untimely filed.

DONE this the 24th day of October, 2012.

/s/ Mark E. Fuller

UNITED STATES DISTRICT JUDGE