

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**
Southern Division

UNITED STATES OF AMERICA,

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*

Plaintiff,

v.

*

Case No.: GJH-19-2824

MICHAEL CYMERMAN, et al.,

*

Defendants.

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MEMORANDUM OPINION AND ORDER

Plaintiff United States of America (the “Government”) brought this civil action to compel Defendants Michael Cymerman, Meredith Cymerman, ITPath Inc., and Yankee Cloud, LLC, to timely withhold, collect, and pay over to the Internal Revenue Service the corporations’ accruing federal employment tax liabilities and enjoin Defendants from further violating and interfering with the enforcement of the internal revenue laws. ECF No. 7-2. Pending before the Court is the Government’s Consent Motion for Leave to File Amended Complaint, ECF No. 7, and the Government’s Motion for Entry of Default Against All Defendants, ECF No. 12. No hearing is necessary. *See* Loc. R. 105.6 (D. Md. 2018). For the following reasons, the Government’s Consent Motion for Leave to File Amended Complaint is granted and the Government’s Motion for Entry of Default Against All Defendants is granted.

I. MOTION FOR LEAVE TO FILE AMENDED COMPLAINT

The Government filed the original Complaint in this case on September 26, 2019. ECF No. 1. On November 14, 2019, the Government filed a Consent Motion for Leave to File Amended Complaint, requesting leave to add additional counts against Defendants and

explaining that it inadvertently failed to include in the Complaint claims for unpaid federal income tax assessed against Defendants Michael Cymerman and Meredith Cymerman and Trust Fund Recovery Penalties assessed against Defendant Michael Cymerman. ECF No. 7. The Government states that it contacted opposing counsel in this matter, and received consent to the relief sought in the Motion.¹ *Id.* at 1.²

At this stage of the litigation, the parties may amend their pleadings “only with the opposing party’s written consent or the court’s leave.” Fed. R. Civ. P. 15(a)(2). Courts are to “freely give leave when justice so requires,” *id.*, “unless the amendment would be prejudicial to the opposing party, there has been bad faith on the part of the moving party, or the amendment would have been futile,” *Steinburg v. Chesterfield Cnty. Planning Comm’n*, 527 F.3d 37, 390 (4th Cir. 2008).

Here, Defendants consent to the amendment requested by the Government. Moreover, no undue delay or prejudice will result from allowing the amendment because no responsive pleading has been filed, discovery has not yet commenced, and no scheduling order has been entered. There is also no evidence of bad faith on behalf of the Government and the requested amendment is not futile. The Government’s Consent Motion for Leave to File Amended Complaint is therefore granted.

II. MOTION FOR ENTRY OF DEFAULT AGAINST ALL DEFENDANTS

The Government also requests the entry of default against all Defendants. The docket reflects that a copy of the Summons and the Complaint was properly served on Defendants

¹ Defendants have not filed a responsive pleading in this case, and no attorney has entered an appearance on their behalf. The Court assumes opposing counsel is Tim Sessing, who the Certificate of Service states is authorized to accept service on behalf of Defendants. *See* ECF No. 7 at 3.

² Pin cites to documents filed on the Court’s electronic filing system (CM/ECF) refer to the page numbers generated by that system.

Michael Cymerman and Meredith Cymerman on October 2, 2019. ECF Nos. 8, 9. Defendants ITPath, Inc. and Yankee Cloud, LLC were also properly served on October 2, 2019 when copies of the Summons and Complaint were left with Meredith Cymerman, who is the resident agent for Yankee Cloud, LLC, ECF No. 11, and is also authorized to accept service on behalf of Michael Cymerman, the resident agent for ITPath, Inc., ECF No. 10.

The twenty-one-day time period for Defendants to plead or otherwise defend in this action expired on October 23, 2019, and as of the date of this Memorandum Opinion and Order, Defendants have failed to plead or otherwise defend as directed in the Summons and as provided by the Federal Rules of Civil Procedure. Therefore, pursuant to Rule 55(a) of the Federal Rules of Civil Procedure, the Government's Motion for Entry of Default Against All Defendants is granted, and default shall be entered against all Defendants.

III. CONCLUSION

For the foregoing reasons, it is hereby ordered by the United States District Court for the District of Maryland that:

1. The Government's Consent Motion for Leave to File Amended Complaint, ECF No. 7, is **GRANTED**;
2. The Government's Motion for Entry of Default Against All Defendants, ECF No. 12, is **GRANTED**;
3. The Clerk **SHALL** enter default against Defendants Michael Cymerman, Meredith Cymerman, ITPath, Inc., and Yankee Cloud, LLC; and

4. Within thirty (30) days of the date of this Memorandum Opinion and Order, the Government shall file a Motion for Default Judgment or explain why such a motion is inappropriate at this time.

Date: May 6, 2020

/s/
GEORGE J. HAZEL
United States District Judge