

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

No. 5:13-CV-684-F

ANTHONY E. WHITE, )  
Plaintiff )  
v. )  
CATERPILLAR LOGISTICS, INC., )  
Defendant. )  
\_\_\_\_\_ )

ORDER

This matter is before the court on the Plaintiff's Motions for Default Judgment [DE-24; DE-30; DE-34] and Defendant's Motion to Set or Extend Time for a Responsive Pleading to Plaintiff's First Amended Complaint [DE-27] and Motion to Set Pretrial Conference and to Strike Plaintiff's "Motion to Proceed Grant Judgment by Default" [DE-35].

**I. PROCEDURAL BACKGROUND**

Plaintiff, proceeding pro se, initiated this action by filing an application to proceed in district court without prepaying fees or costs [DE-1] on September 30, 2013. United States Magistrate Judge James E. Gates allowed the Plaintiff's application, determined that Plaintiff's proposed complaint was not frivolous, and directed the Clerk of Court to file the Complaint.

In the Complaint [DE-4], Plaintiff alleges that Defendant Caterpillar Logistics, Inc. ("CLI"), terminated his employment on the basis of his race and retaliation in violation of Title VII of the Civil Rights Act of 1964. CLI filed an Answer [DE-11] on November 12, 2013. The Clerk of Court promptly issued an order for discovery plan [DE-12]. Both parties subsequently filed separate proposed discovery plans which have been referred to Judge Gates.

Thereafter, Plaintiff filed a “Motion to Proceed and Response” [DE-13], which this court construed as a motion to amend his complaint. Because Plaintiff still had the opportunity to amend his complaint once as a matter of course under Rule 15(a)(1), the court allowed the motion in an order filed on December 31, 2013 [DE-21], which was superseded by an amended order entered that same day [DE-22]. Rather than directing the Plaintiff to file a new amended complaint, the court stated that the operative complaint in this case will consist of the Plaintiff’s original Complaint [DE-1], as amended by the Plaintiff’s motion to amend at docket entry 13.

Under the applicable rules, CLI’s response to the amended pleading was due on or before January 17, 2014.<sup>1</sup> Plaintiff, however, filed a Motion for Default Judgment [DE-24] on January 3, 2014, asserting that CLI failed to file an answer or otherwise respond to his amended pleading within 21 days. CLI responded by filing a Motion to Set or Extend Time for a Responsive Pleading to Plaintiff’s First Amended Complaint [DE-27], its Answer [DE-28] and its opposition [DE-29] to Plaintiff’s Motion for Default Judgment, all on January 13, 2014. That same date, Plaintiff file a Second Motion for Default Judgment [DE-30], to which CLI timely responded in opposition [DE-33]. Plaintiff, on February 3, 2014, filed a Third Motion for Default Judgment [DE-34]. CLI, in turn, filed a motion asking the court to strike the third motion for default judgment and also asking the court to set a pretrial conference [DE-35].

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<sup>1</sup> The court allowed Plaintiff’s motion to amend on December 31, 2013. Accordingly, under Federal Rule 12(a)(4)(A), CLI’s answer or response to the amended pleading was due within fourteen days. When considered in conjunction with Federal Rule 6(d), the deadline was January 17, 2014. *See* Fed. R. Civ. P. 6(d) (“When a party may or must act within a specified time after service and service is made under Rule 5(b)(2)(C), (D), (E) or (F), 3 days are added after the period would otherwise expire under Rule 6(a).”).

## II. DISCUSSION

Plaintiff's motions for default judgment [DE-24; DE-30; DE-34] are all DENIED. Under Rule 55(a) of the Federal Rules of Civil Procedure, an entry of default is appropriate "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise." Fed. R. Civ. P. 55(a). As the court has recounted, CLI had until January 17, 2014 to respond to the amended pleading. It timely filed its answer on January 13, 2014. Entry of default against CLI, therefore, is not appropriate, and accordingly, no default judgment can be had against it.<sup>2</sup>

CLI's Motion to Set or Extend Time for a Responsive Pleading to Plaintiff's First Amended Complaint [DE-27] and its motion to strike plaintiff's third motion for default judgment [DE-35] are accordingly DENIED as MOOT.

In the motion to strike, CLI also requests, pursuant to Rule 16(a), that the court set an in-person pretrial conference, noting that no scheduling order has been entered. Since CLI filed this motion, United States Magistrate Judge Robert B. Jones, Jr., has been reassigned to this case. The Clerk of Court is DIRECTED to refer the parties' proposed discovery plans to Judge Jones. It is within his discretion as to whether an in-person pretrial conference is necessary.

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<sup>2</sup> In the third motion for default judgment, Plaintiff states that CLI failed to respond to a counterclaim. This is not an accurate statement. Moreover, Plaintiff appears to assert that CLI itself asserted a counterclaim. This too is not accurate. At the end of its original Answer [DE-11], CLI requested "that the court dismiss with prejudice Plaintiff's Complaint in its entirety and award Defendant its reasonable attorneys' fees, costs, expenses, and any and all other relief the Court deems just and proper. Answer [DE-11] p. 11. That request does not constitute a counterclaim.

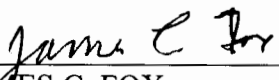
### III. CONCLUSION

For the foregoing reasons, the Motions for Default Judgment [DE-24; DE-30; DE-34] are DENIED. CLI's Motion to Set or Extend Time for a Responsive Pleading to Plaintiff's First Amended Complaint [DE-27] is DENIED as moot, as is the Motion to Set Pretrial Conference and to Strike Plaintiff's "Motion to Proceed Grant Judgment by Default" [DE-35].

The Clerk of Court is DIRECTED to refer the parties' proposed discovery plans to United States Magistrate Judge Robert B. Jones, Jr. It is within his discretion as to whether an in-person pretrial conference is necessary.

SO ORDERED.

This the 10<sup>th</sup> day of April, 2014.

  
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JAMES C. FOX  
Senior United States District Judge