

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

<p>NATIONAL LABOR RELATIONS BOARD,</p> <p>Petitioner,</p> <p>v.</p> <p>ENJOI TRANSPORTATION, LLC, PAULETTE HAMILTON, GREGORY LYNN,</p> <p>Defendants.</p>	<p>No. 18-cv-13597</p>
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**NATIONAL LABOR RELATIONS BOARD'S REPLY BRIEF IN
SUPPORT OF MOTION FOR ENTRY OF DEFAULT JUDGMENT**

The National Labor Relations Board (“Board” or “NLRB”) moved for entry of default judgment on February 4, 2019 against Defendants Enjoi Transportation, LLC (“Enjoi”), Paulette Hamilton and Gregory Lynn (“Individual Defendants”). [ECF No. 20.] On July 15, 2019, Individual Defendants opposed the NLRB’s motion. [ECF Nos. 42 and 42-1.] In opposing the Board’s motion, Hamilton and Lynn move this Court to set aside the defaults that were entered by the Clerk of the Court on January 15, 2019, and generally deny the legal conclusions (but not the factual allegations) of the Board’s complaint. [ECF Nos. 15, 17, 19.] Through this reply, the Board requests that the clerk’s defaults be affirmed, and reasserts its position in favor of default judgment against each of the Defendants, as relayed in its February 4, 2019 motion.

As an initial matter, the clerk’s entry of the default of Enjoi should be affirmed because Enjoi has failed to answer or otherwise respond to the Board’s complaint.¹ Additionally, the Board’s motion for entry of

¹ It is of course long settled that corporations cannot appear *pro se*. *Commercial and Railroad Bank of Vicksburg v. Slocomb*, 39 U.S. (14 Pet.) 60, 65 (1840).

default judgment, as it relates to Enjoi, should be granted because Enjoi has not responded to the Board's motion.

With respect to the Individual Defendants, the clerk's entries of defaults should also be upheld. The Individual Defendants have failed to answer or otherwise plead in response to the Board's complaint and that failure has been shown by affidavit. Fed. R. Civ. P. 55(a); [ECF Nos. 14, 16.] Likewise, the Board's motion for entry of default judgment should be granted because the Individual Defendants have not shown good cause for their failure to plead in response to the Board's complaint. The Individual Defendants did respond to the Board's motion for entry of default judgment on July 15, 2019. [ECF No. 42].

Contrary to the Individual Defendants' assertions, the Board properly effectuated service on them. On November 19, 2018, Lynn communicated with a Board agent in-person regarding service of the complaint, and on November 20, 2018, Defendant Lynn was served with a copy of the summons and complaint.² [ECF Nos. 5 and 4-6]. Service of process with respect to Hamilton proved to be more difficult, however,

² Robert Lynn, Lynn's father, accepted service at Lynn's mailing address, an apparent place of abode. Fed. R. Civ. P. 4(e)(2)(B).

because she deliberately acted to evade personal service on several occasions, as explained in the Board's motion to authorize service by alternative means. [ECF No. 5.] Aside from the just-mentioned communications with Gregory Lynn and his father, Hamilton was observed, at her home, by the Board's process server on several occasions from November 30, 2018 through December 2, 2018. [ECF Nos. 5, 4-6, and 4-7].

On December 13, 2018, this Court acknowledged the appropriateness of the Board's efforts to serve Hamilton, and issued an Order Authorizing Alternative Service of the summons and complaint upon her. [ECF No. 7]. The Board, in conformance to the Court's Order, mailed a copy of the summons and complaint to Hamilton, and prominently affixed a copy to the door of her residence. [ECF No. 9.] Individual Defendants now claim, for the first time, that they received the complaint only on February 9 because they were away for eight weeks. [ECF No. 42-1.]

The Sixth Circuit has explained that three factors determine the outcome of a Rule 55(c) motion: "1. Whether the plaintiff will be prejudiced; 2. Whether the defendant has a meritorious defense; and

3. Whether culpable conduct of the defendant led to the default.”

Shepard Claims Serv., Inc. v. William Darrah & Assocs., 796 F.2d 190, 192–93 (6th Cir. 1986) (internal quotations and citations omitted).

Indeed, the Sixth Circuit has suggested in an unpublished decision that “[w]illful and repeated’ conduct . . . ‘might well lead a court to decide that the culpability factor *alone* justifies entry of a default judgment.”

Manufacturers' Indus. Relations Ass'n v. E. Akron Casting Co., 58 F.3d 204, 209 (6th Cir. 1995) (quoting *Johnson v. Detroit*, No. 89–1284, 1989 WL 153550, at *2, (6th Cir. Dec. 20, 1989) (emphasis added)).

All three factors weigh in the Board’s favor here. First, the longer this case drags on, the more the Board is prejudiced relative to other creditors with respect to the Individual Defendants’ assets, because it cannot attach those assets until this case concludes without seeking a pre-judgment writ of attachment. *See generally* 28 U.S.C. §§ 3101, 3102. Thus, this case does not present a situation of “mere delay,” *United Coin Meter v. Seaboard Coastline R.R.*, 705 F.2d 839, 845 (6th Cir. 1983); rather, there is a very real possibility that failure to enter a default judgment may result in nonsatisfaction of the Board’s claim to the benefit of the Individual Defendants’ other creditors.

Second, although the Individual Defendants include one-line claims that they have meritorious defenses, nothing in their response indicates *why* they believe those defenses to be meritorious. They dispute none of the facts stated in the Board's complaint, which make out a case of fraudulent transfer under every one of the four causes of action created by the Federal Debt Collection Procedures Act, 28 U.S.C. § 3304. For instance, Enjoi's debts far exceeded its assets when, in the summer and fall of 2018, its insiders transferred the challenged \$46,224 to themselves rather than pay the company's debts to the United States. Enjoi's operating reports to the bankruptcy court (at least once it got around to correcting the gross errors that infected its initial reports) prove that it was hundreds of thousands of dollars in debt during the relevant period. [ECF No. 1-16, at p. 16; ECF No. 1-7, at p. 19.] And the Individual Defendants—Enjoi's principals and the persons with access to its bank accounts—have not stated, and could hardly suggest, that they were unaware of this fact.³

³ Likewise, Defendants deny the amount sought by the Board, but they cannot deny the accuracy of bank statements the company itself filed in the bankruptcy court. The damages sought by this motion are only those readily ascertainable as transfers to insiders from Enjoi's own bank records.

Finally, Defendants are entirely culpable for their own default. Nothing in the Individual Defendants' affidavits controverts any sworn testimony by the Board's agents submitted in support of the instant motion. Individual Defendants fail to dispute either that they evaded service prior to issuance of the order permitting service by alternative means, or that the Board then complied with the terms of that order. Individual Defendants assert only that they did not personally receive a copy of the summons and complaint until February 9. Taking everything they say in their affidavits as true,⁴ and crediting the uncontested facts in the Board's declarations and affidavits, establishes that the Individual Defendants absconded to an unknown location (apparently without leaving a forwarding address) following multiple efforts to personally serve them at their address and after a copy of the

⁴ The Board does not necessarily regard those affidavits as credible. Notably, the Individual Defendants do not provide the dates of their alleged absence or detail their whereabouts, and Lynn, when testifying on behalf of Enjoi in another matter, made no reference to having been out of town in December and January when the Board's attorney questioned him about his efforts to obtain work for the company. This fact dispute, however, is immaterial because the Individual Defendants' affidavits simply do not controvert the allegations of the instant motion.

Board's suit had been served by substituted service upon Lynn's father. That is not innocent conduct; it is evasion of process.

The whole point of authorizing service by alternative means was to prevent service from being defeated by chicanery. The assertion by the Individual Defendants that they did, indeed, engage in such chicanery merely digs the hole deeper. Individual Defendants cannot establish good cause for their delayed response to the Board's complaint.

The Board's motion should be granted and the proposed default judgment entered.

Respectfully submitted,

NATIONAL LABOR RELATIONS BOARD

s/ Paul A. Thomas

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Dated at Washington, D.C.
this 22nd day of July, 2019.

CERTIFICATE OF SERVICE

I hereby certify that on July 22, 2019, I electronically filed the foregoing with the Clerk of the Court by using the Court's Case Management Electronic Case Filing System ("CM/ECF").

I further certify that the foregoing documents were served on Defendants by mail on July 23, 2019 at 1749 Lexington Dr., Troy, MI, 48084-5711.

s/ Paul A. Thomas
Paul A. Thomas
Trial Attorney