

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF MAINE**

<b>JOEL F. BROWN,</b>	)	
	)	
<i>Plaintiff</i>	)	
	)	
<b>v.</b>	)	<b>Docket No. 98-444-P-C</b>
	)	
<b>MAINE MEDICAL CENTER, et al.,</b>	)	
	)	
<i>Defendants</i>	)	

**MEMORANDUM DECISION ON MOTIONS OF DEFENDANTS  
TRYNOR AND BUCHANAN FOR ENTRY OF DEFAULT**

Defendants Carl R. Trynor and Norman H. Buchanan have moved for default on their respective counterclaims against the plaintiff, Joel F. Brown. I will grant the motions.

On May 5, 1999 Trynor and Buchanan filed answers to the complaint in this action. Docket Nos. 24 & 25. Both answers included a counterclaim asserting that Count I of the complaint, to the extent that it invoked 15 U.S.C. § 1681s-2(a), was brought in bad faith and “for purposes of harassment.” Answer of Defendant Norman H. Buchanan to Complaint of Plaintiff with Counterclaim (“Buchanan Answer”) (Docket No. 25) at 5; Answer of Defendant Carl R. Trynor to Complaint of Plaintiff with Counterclaim (“Trynor Answer”) (Docket No. 24) at 5. Both counterclaims seek as damages all attorney fees incurred “in relation to the work expended in responding to the unsuccessful pleadings, motions, or other paper [sic].” Buchanan Answer at 5; Trynor Answer at 5.

On July 14, 1999, no replies to the counterclaims having been filed, Trynor filed a motion

for entry of default on his counterclaim. Docket No. 27. Buchanan followed suit on July 15, 1999. Docket No. 28. The plaintiff has filed no opposition to these motions. Instead, on July 27, 1999 he filed answers to the counterclaims. Docket Nos. 31 & 32. Federal Rule of Civil Procedure 12(a)(2) provides that a reply to a counterclaim shall be served within 20 days after the service of the answer. Filing of the plaintiff's replies on July 27, 1999 to counterclaims served on or about May 5, 1999, Buchanan Answer at 6; Trynor Answer at 6, did not by any possible means of calculation occur within 20 days of service of those counterclaims. This court's Local Rule 7(b) provides that, "[u]nless within ten (10) days after the filing of a motion the opposing party files written objection thereto, incorporating a memorandum of law, the opposing party shall be deemed to have waived objection." The plaintiff accordingly has waived objection to the motions for entry of default.

The plaintiff has not sought leave of court to file his replies to the counterclaims more than two months after the counterclaims were served, nor has he made any attempt to provide an explanation for the late attempted filing of those replies. Given the plaintiff's failure to object to the motions for entry of default and his unexplained failure to comply with Fed. R. Civ. P. 12(a)(2), entry of default and striking of the replies are in order. *See generally Maine Nat'l Bank v. F/V Cecily B*, 116 F.R.D. 66, 69-70 (D. Me. 1987). This is not a complex case. The degree of tardiness in filing the replies, the utter lack of explanation for the tardiness, the basic nature of the rules with which the plaintiff has failed to comply and the negative effect that denying the motions for default would have on the administration of justice under the circumstances of this case, *see United States v. Roberts*, 978 F.2d 17, 21-22 (1st Cir. 1992), all lead to the conclusion that no action by the court other than granting the motions for entry of default and striking the replies would be appropriate.

For the foregoing reasons, the motions of defendants Buchanan and Trynor for entry of

default on their counterclaims are **GRANTED**. The clerk is ordered to enter default on the counterclaims of defendants Buchanan and Trynor against the plaintiff and to strike the plaintiff's answers to those counterclaims.

Dated this 6th day of August, 1999.

---

David M. Cohen  
United States Magistrate Judge