

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

MELVIN C. LEWIS,

Petitioner,

v.

Case No: 6:19-cv-810-Orl-40TBS

THE STATE OF FL, INC., STATE
ATTORNEY GENERAL, FIFTH DIST.
APPEAL VENUE, ORANGE COUNTY,
NINTH CIRCUIT, INC., ARAMIS D.
AYALA, ELIZABETH STARR, STEVE
JEWITT, KIETH A. CARSTEN,
WHITHEAD AND WILSON, J.J.
ESQUIRES, MUNICIPAL CITY OF
OAKLAND, FLORIDA, INC., ANGELA D.
CAMPBELL and ELIAS DEJESUS,

Respondents.

ORDER

This matter comes before the Court on Plaintiff's Petition for Default Judgment Against Defendants Town Municipality of Oakland, FL, Elias DeJesus, and Angela D. Campbell (Doc. 27). Plaintiff argues that judgment should be entered against these Defendants because they failed to respond to his summonses and complaint within the 21 days of service (Doc. 27, ¶ 1). These Defendants filed a motion to dismiss Plaintiff's complaint for failure to state a cognizable claim (Doc. 13). The filing of this motion extends the deadline to respond to the complaint as provided in Federal Rule of Civil Procedure 12(a)(4). See Beaulieu v. Bd. of Tr. of Univ. of W. Florida, No.3:07cv30/RV/EMT, 2007 WL 2020161, at *2 (N.D. Fla. July 9, 2007) ("Defendant's motion to dismiss, therefore, automatically extends its time to answer under Rule 12(a)(4) until after the court has ruled on Defendant's motion to dismiss ... Thus, Plaintiff's motion

for default judgment should be denied.”); Mullane v. Barclays Bank Delaware Inc., Case No. 1:18-cv-20596, 2018 WL 1835933, at *1 (S.D. Fla. April 9, 2018) (“Specifically, Rule 12(a)(4) states that “if the court denies the motion or postpones its disposition until trial, the responsive pleading must be served within 14 days after notice of the court’s action . . . No answer is due while Defendant’s motion to dismiss remains pending.”).

The Court has not yet ruled on the pending motion to dismiss, therefore, the deadline for Defendants to respond to Plaintiff’s complaint is tolled. As such, Plaintiff’s motion for entry of default judgment is **DENIED**.¹

DONE and ORDERED in Orlando, Florida on June 7, 2019.



THOMAS B. SMITH
United States Magistrate Judge

Copies furnished to:

Counsel of Record
Pro se Plaintiff

¹ Even if these Defendants were in default, no default judgment could be entered until after the entry of Clerk’s defaults and the filing of a sufficient motion for the entry of default judgment.