

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Christine M. Arguello**

Civil Action No. 14-cv-01188-CMA-KMT

ANN MARIE JULIE MEDINA, and
SAMUEL MEDINA, JR.,

Plaintiffs,

v.

WERNER ENTERPRISES, INC.,

Defendant.

ORDER ON MOTIONS

This matter is before the Court on Defendant's Motion for Leave to File Motion to Dismiss and Supporting Brief Out of Time (Doc. # 12), Motion to Set Aside Clerk's Entry of Default (Doc. # 13), and Motion for Hearing (Doc. # 15).

This Court has discretion to allow Defendant to file its Motion to Dismiss and Brief Out-of-Time. See *Panis v. Mission Hills Bank, N.A.*, 60 F.3d 1486, 1494 (10th Cir. 1995). The Court exercises this discretion here: the failure to file was the result of an inadvertent error by a legal secretary—one which has caused no prejudice to the Court or any party and which counsel for Defendant has promptly sought to correct. Further, as noted by Defendant, Plaintiffs failed to confer with Defendant prior to filing the Motion for Default and, in light of the nature of the clerical error here, such a conferral would have caused Defendant to file immediately the motion to dismiss. Indeed, not only does

Local Rule 7.1(a) require conferral under such circumstances, this Court also considers that as a matter of professional courtesy, Plaintiffs' counsel should have called counsel for Defendant and inquired as to why he had failed to adhere to a stipulated deadline, rather than springing a surprise motion for default judgment.

Accordingly, this Court GRANTS Defendant's Motion for Leave to File Motion to Dismiss and Supporting Brief Out of Time (Doc. # 12). It is

FURTHER ORDERED that Defendant's Motion to Dismiss (Doc. # 12-1) and Defendant's Brief In Support of Defendant's Motion to Dismiss (Doc. # 12-2) are hereby accepted for filing and shall each be filed by the Clerk's Office as a separate document.

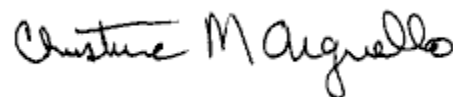
It is

FURTHER ORDERED that Defendant's Motion to Set Aside Clerk's Entry of Default (Doc. # 13) is GRANTED, and the Clerk's Entry of Default is set aside and VACATED. It is

FURTHER ORDERED that Defendant's Motion for a Hearing (Doc. # 15) is DENIED AS MOOT.

DATED: July 14, 2014

BY THE COURT:



CHRISTINE M. ARGUELLO
United States District Judge