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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

MEMORANDUM AND ORDER

This matter is before the Court on the motion of defendants Matthew Douglas Brandenburg, Incomeinc.com, Incomeinc, Inc., and Incorporate Success, LLC (“Incomeinc Defendants”) to Set Aside Clerks Entry of Default (Doc. 30). The movant states that the plaintiff and remaining defendant, Theplanet.com Internet Services, Inc. (“Theplanet”) have been consulted and do not object to setting aside the clerk’s entry of default against these defendants.

Under Fed. R. Civ. P. 55(c), the Court may set aside a clerk’s entry of default if good cause is shown. When making this determination, the Court must consider “whether the default was willful, whether setting it aside would prejudice the adversary, and whether a meritorious defense is presented.”¹ The Court need not consider all of these factors, but is mindful that “willful failure alone may constitute sufficient cause for the court to deny the motion.”² The standard is “fairly liberal because ‘[t]he preferred disposition of any case is upon its merits and

¹See, e.g., *Guttman v. Silverberg*, 167 F. App'x 1, 3 (10th Cir. 2005).

²Id.

not by default judgment.”³

The Court finds that the entry of default in this circumstance was not caused by any bad faith or culpable conduct on the part of the Incomeinc Defendants. Instead, the delay was the result of an inadvertent misunderstanding. Upon discovery of the mistake, the Incomeinc Defendants promptly hired counsel, who then promptly (1) conferred with counsel for plaintiff, (2) entered an appearance, and (3) filed the instant motion to set aside the entry of default. The Court further finds that no prejudice will result from setting aside the entry of default. Plaintiff’s counsel has confirmed that it has no objection to the requested relief. Counsel for co-defendant Theplanet has done so as well. Such consent confirms that plaintiff (and Theplanet) will not be prejudiced by setting aside the default.

IT IS THEREFORE ORDERED BY THE COURT that defendants Matthew Douglas Brandenburg, Incomeinc.com, Incomeinc, Inc., and Incorporate Success, LLC’s (“Incomeinc Defendants”) Motion to Set Aside Clerks Entry of Default (Doc. 30). is granted. The Clerk’s Entry of Default is hereby set aside as to these defendants.

Dated: December 2, 2010

S/ Julie A. Robinson
JULIE A. ROBINSON
UNITED STATES DISTRICT JUDGE

³*Crutcher v. Coleman*, 205 F.R.D. 581, 584 (D. Kan. 2001) (quoting *Gomes v. Williams*, 420 F.2d 1364, 1366 (10th Cir. 1970)).