

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

TINO MARINO,)	
)	
Plaintiff,)	
)	
v.)	Docket no. 08-cv-326-P-S
)	
MAINE DEPARTMENT OF)	
CORRECTIONS, et al.,)	
)	
Defendants.)	

**ORDER ON DEFENDANT’S MOTIONS TO SET ASIDE DEFAULT
AND FOR LEAVE TO FILE A LATE ANSWER**

Before the Court are Defendant James O’Farrel, Jr.’s Motion to Set Aside Entry of Default (Docket # 44) and Motion for Leave to File a Late Answer (Docket # 45). No opposition to either motion has been filed.

The Clerk entered default as to Defendant O’Farrel on April 7, 2009. O’Farrel now moves the Court to set aside that default and grant him leave to file an answer to Plaintiff’s Third Amended Complaint. A district court has the discretion to set aside the entry of default upon a showing of “good cause” by the defaulted party. Fed. R. Civ. P. 55(c). O’Farrel has submitted an affidavit setting forth the basis for his good cause. Having considered the factors outlined by the First Circuit in McKinnon v. Kwong Wah Restaurant, 83 F.3d 498 (1st Cir. 1996), as well as the general principle that it is preferable to resolve a case on its merits, see Key Bank of Maine v. Tablecloth Textile Co., 74 F.3d 349, 356 (1st Cir. 1996), the Court finds that O’Farrel has shown good cause for his failure to file a timely response.

Accordingly, O’Farrel’s Motion to Set Aside Entry of Default (Docket # 44) is GRANTED and the Clerk’s Entry of Default (Docket # 28) is SET ASIDE. O’Farrel’s Motion

for Leave to File a Late Answer (Docket # 45) is GRANTED and O'Farrel shall have twenty days from the entry of this Order to answer or otherwise respond to Plaintiff's Third Amended complaint.

SO ORDERED.

/s/ George Z. Singal
United States District Judge

Dated this 9th day of September, 2009.