

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

	X	
	:	
NAVCAN.DC, INC. et al	:	
	:	
-against-	:	23 Civ. 2267 (LGS)
	:	<u>ORDER</u>
JEFFREY RINDE et al,	:	
Defendants	..	
	:	
	X	

LORNA G. SCHOFIELD, District Judge:

WHEREAS, in a Report and Recommendation (the “Report”) dated April 23, 2024, Magistrate Judge Jennifer E. Willis recommended that Defendants’ default for failure to file a timely Answer be excused, that Defendants’ late Answer be considered operable and that Plaintiffs’ request for a default judgment be denied. No objection to the Report was filed.

WHEREAS, the recommendation in the Report was based on a finding of counsel’s excusable neglect under Federal Rule of Civil Procedure 6(b)(1)(B), which states that, “[w]hen an act may or must be done within a specified time, the court may, for good cause, extend the time: . . . on motion made after the time has expired if the party failed to act because of excusable neglect.” The finding of excusable neglect was based on counsel’s representation that the failure to file a timely Answer was due to counsel’s trial preparation in another case, an inadvertent failure to calendar the Answer deadline and an unexpected illness.

WHEREAS, the recommendation also was based on Federal Rule of Civil Procedure 55(c), which states that “[t]he court may set aside an entry of default for good cause” The Report found good cause based on a finding that the default was not willful (given the circumstances described above), the lack of prejudice to Plaintiffs who were on notice of the

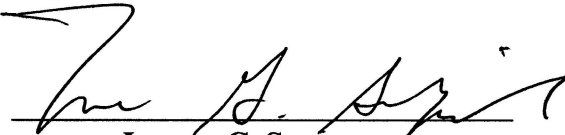
substance of the late Answer and the early stage of the proceedings and that the Defendants may have meritorious affirmative defenses.

WHEREAS, in reviewing a magistrate judge’s report and recommendation, a district judge “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). “In a case such as this one, where no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record.” *Kuan v. Notoriety Grp. LLC*, No. 22 Civ. 1583, 2023 WL 3936749, at *1 (S.D.N.Y. June 9, 2023).

WHEREAS, the Court finds no clear error on the face of the record as to the R&R. It is hereby

ORDERED and ADJUDGED that the Report is **ADOPTED**. Defendants’ default is excused, the Answer at Dkt. No. 72 is considered operable, and Plaintiffs’ request to seek a motion for default judgement is denied.

Dated: August 29, 2024
New York, New York



LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE