IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,	)	
Plaintiff,	)	
v.	)	Case No. 06-0814-CV-W-SWH
JOLET II, INC., d/b/a THOMPSON CARE CENTER,	)	
Defendant.	)	

ORDER

On January 11, 2007, plaintiff filed a Request for Entry of Default Against Defendant Jolet II d/b/a Thompson Care Center (doc #4). On January 29, 2007, the undersigned filed a Notice to the Clerk of Court (doc #5), notifying the Clerk that pursuant to Rule 55(a), Federal Rules of Civil Procedure, the Clerk could enter the default of defendant Jolet II, d/b/a Thompson Care Center. An Entry of Default By Clerk (doc #7) was entered on January 29, 2007.

Plaintiff filed a Motion for Judgment By Default (doc #6) on January 29, 2007. On that same day, defendant filed a Motion and Suggestions in Opposition to Default Judgment and for Leave to File Answer to Complaint Out of Time (doc #8). Plaintiff has not responded to defendant's Motion for Leave to File Answer to Complaint Out of Time and the time for any response has now passed.

In defendant's suggestions in opposition to default judgment, defense counsel states that it was an oversight on his part that a timely answer was not filed. Defense counsel further states that defendant has legitimate defenses to plaintiff's claims. Finally, defense counsel seeks leave of court to file the answer out of time.

As set forth by the Eighth Circuit Court of Appeals in Johnson v. Dayton Electric Manufacturing Company, 140 F.3d 781, 784 (8th Cir. 1998), when deciding whether a default judgment is warranted, a court should review "whether the conduct of the defaulting party was blameworthy or culpable, whether the defaulting party has a meritorious defense, and whether the

other party would be prejudiced if the default were excused." In applying these standards, the Court first finds that while defense counsel could have been more diligent in his defense of this case, the Court does not believe that counsel has willfully violated court rules or intentionally delayed this case. Second, defense counsel argues that defendant has a meritorious defense. Finally, "prejudice may not be found from delay alone or from the fact that the defaulting party will be permitted to defend on the merits." Id. at 785. Instead, there must be a loss of evidence, increased difficulties in discovery or greater opportunities for fraud and collusion before prejudice is found. Id. No evidence of prejudice has been presented to the Court. The Court finds that this case should be adjudicated on the merits.

Based on the foregoing, it is

ORDERED that Plaintiff's Motion for Judgment By Default (doc #6) is denied. It is further

ORDERED that defendant's Motion for Leave to File Answer to Complaint Out of Time (doc #8) is granted. It is further

ORDERED that defense counsel shall electronically file the answer within ten days of the date of this Order.

/s/ Sarah W. Hays
SARAH W. HAYS
UNITED STATES MAGISTRATE JUDGE