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**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,)	1:12-cv-00298-AWI-SMS
)	
Plaintiff,)	ORDER RE: FINDINGS AND
)	RECOMMENDATIONS ON
v.)	MOTION FOR ENTRY OF
)	DEFAULT JUDGMENT
REAL PROPERTY LOCATED AT 3418 S.)	
MARKS AVENUE, FRESNO, FRESNO)	(Docs. 27, 34)
COUNTY CALIFORNIA, APN: 328-)	
111-06, INCLUDING ALL)	
APPURTENANCES AND)	
IMPROVEMENTS THERETO,)	
)	
Defendant.)	

I. INTRODUCTION

Plaintiff United States of America (hereinafter referred to as “Plaintiff” or “the government”) brings this *in rem* civil action pursuant to 21 U.S.C. § 881(a)(7) for forfeiture of real property located at 3418 S. Marks Avenue, Fresno, California. On May 17, 2012, claimant Chan Eagle (hereinafter referred to as “Claimant” or “Eagle”) filed a verified claim in opposition to the government’s forfeiture action. On July 25, 2012, the Magistrate Judge issued an order striking Eagle’s claim and directing the Clerk of Court to enter Eagle’s default for failure to strictly comply with the filing requirements of Rule G(5) of the Supplemental Rules for Admiralty or Maritime Claims and Asset

1 Forfeiture Actions. On August 1, 2012, the government filed an application for entry of default
2 judgment against the interest of Eagle in the property and further requested entry of final judgment
3 vesting in it all right, title and interest in the property. The matter was submitted to the Magistrate
4 Judge. On August 30, 2012, the Magistrate Judge issued her findings and recommendations
5 recommending the government’s application be granted, default judgment entered against the interest
6 of Eagle and final forfeiture judgment entered vesting in the government all right, title and interest
7 in the property. Having reviewed the pleadings of record and all competent and admissible evidence
8 submitted, the Court, for reasons discussed below, respectfully declines to adopt the findings and
9 recommendations. Accordingly, the government’s application for entry of default judgment and final
10 judgment shall be denied. The Court further vacates Eagle’s default and directs Eagle to file a new
11 verified claim and answer to the complaint within seven days of entry of this order.

12 13 **II. FACTS AND PROCEDURAL BACKGROUND** 14

15 The Court refers the parties to previous orders for a complete chronology of the proceedings. On
16 February 28, 2012, the government filed its verified complaint pursuant to 21 U.S.C. § 881(a)(7) for
17 an *in rem* forfeiture of real property located at 3418 S. Marks Avenue, Fresno, California, APN: 328-
18 111-06, including any right, title and interest in the whole of any lot or tract of land and
19 appurtenances and improvements thereon, contending the property was used or intended to be used
20 to cultivate or facilitate the cultivation of marijuana in violation of 21 U.S.C. § 841 et seq. The
21 complaint alleged that on October 24, 2011, DEA agents and deputies of the Fresno County Sheriff’s
22 Department discovered 1,126 live marijuana plants and 840 pounds of processed marijuana while
23 executing a federal search warrant on the property. The complaint further alleged during the search,
24 the agents came into contact with Eagle, who identified herself as the property owner. In conjunction
25 with the complaint, the government filed an application pursuant to Rule G(4) of the Supplemental
26 Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions (“Supplemental Rules”) for
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1 order of publication authorizing public notice of the action and arrest of the defendant property to
2 be given in a newspaper of general circulation or on the government's official Internet forfeiture site.
3 On March 7, 2012, the Magistrate Judge granted the government's application for publication.

4 On May 17, 2012, Eagle filed her verified claim in opposition to the forfeiture action,
5 alleging she was the owner of record of the property and that the property was her primary residence.
6 On May 18, 2012, the government filed the declaration of Elisa Rodriguez, a government paralegal
7 assigned to this action, who testified that on April 10, 2012, Eagle was personally served by the
8 United States Marshals Service with copies of the complaint, notice of the complaint and application
9 and order for publication, as well as notice of the government's recording of a lis pendens on the
10 property, order setting mandatory scheduling conference, notice of availability of voluntary dispute
11 resolution, notice of availability of a magistrate judge and notice of forfeiture letter. The government
12 also filed a Marshals Service process receipt and return corroborating the April 10, 2012 date.

13 On June 15, 2012, the government filled a motion to strike Eagle's claim in opposition to
14 forfeiture pursuant to Supplemental Rule G(8). On July 25, 2012, the Magistrate Judge granted the
15 government's motion to strike Eagle's claim, concluding the May 17, 2012 filing of the claim was
16 not timely filed within 35 days of the government's April 10, 2012 personal service of notice of the
17 action and the complaint on Eagle as required by Supplemental Rules G(4)(b) and G(5)(a)(ii)(A).
18 The Magistrate Judge further found Eagle had failed to file either an answer or a Rule 12 motion in
19 response to the complaint within 21 days of filing the claim as required by Supplemental Rule
20 G(5)(b). Accordingly, the Magistrate Judge directed the Clerk of Court to enter Eagle's default
21 pursuant to Federal Rule of Civil Procedure 55(a). Eagle's default was entered July 27, 2012.

22 On August 1, 2012, the government filed an application for entry of default judgment against
23 the interest of Eagle in the property at issue and for final judgment of forfeiture vesting in the
24 government all right, title and interest in the property. On August 14, 2012, Eagle filed her
25 opposition to the government's application for entry of default judgment and final judgment of
26 forfeiture. The government filed its reply to Eagle's opposition on August 15, 2012. The matter was
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1 submitted to the Magistrate Judge for findings and recommendations. On August 30, 2012, the
2 Magistrate Judge issued her findings and recommendations, recommending the Court grant the
3 government’s application, enter default judgment against the interest of Eagle and enter final
4 forfeiture judgment vesting in the government all right, title and interest in the property. On
5 September 17, 2012, Eagle filed her opposition to the Magistrate Judge’s findings and
6 recommendations. On September 20, 2012, the government filed its response to Eagle’s objections.

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8 **III. LEGAL STANDARD**
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10 As to a magistrate judge’s findings and recommendations, the Court “shall make a de novo
11 determination of those portions of the report or specified proposed findings or recommendations to
12 which objection is made” and “may accept, reject, or modify, in whole or in part, the findings or
13 recommendations[.]” 28 U.S.C. § 636(b)(1); *see* Fed. R. Civ. P. 72(b)(3). The Court “may also
14 receive further evidence or recommit the matter to the magistrate judge with instructions.” *Id.*

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16 **IV. DISCUSSION**
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18 The Court has conducted a de novo review of the case in accordance with the provisions of 28
19 U.S.C. § 636(b)(1) and Local Rule 303. Given the tenor of the pleadings, the Court finds it
20 appropriate initially to construe Eagle’s opposition to the government’s application for entry of
21 default judgment as a motion to vacate her default. *See Meehan v. Snow*, 652 F.2d 274, 276 (2d Cir.
22 1981) (“Even if a default has been entered, opposition to a motion for a default judgment can be
23 treated as a motion to set aside the entry of a default despite the absence of a formal [Federal] Rule
24 [of Civil Procedure] 55(c) motion”). The Court further finds it appropriate to construe the
25 government’s response to Eagle’s opposition as an opposition to a motion to vacate Eagle’s default.
26 In light of the Court’s construction and the government’s failure to identify anything technically non-

1 compliant about Eagle’s May 17, 2012 verified claim other than the mere untimeliness of its filing,
2 the Court concludes resolution of this matter should be determined according to the less rigorous
3 standard for setting aside a default under Rule 55(c) rather the more rigorous standard imposed in
4 civil forfeiture actions by the doctrine of strict compliance with the Supplemental Rules. *See U.S.*
5 *v. \$22,050.00 U.S. Currency*, 595 F.3d 318, 322-23, 324 (6th Cir. 2010) (“[I]n civil forfeiture cases
6 . . . where the question is whether to excuse a known claimant’s failure to file a verified claim and
7 answer in the allotted time, district courts should analyze the case using the generally applicable
8 Federal Rules rather than under [the] requirement of ‘strict compliance’ with the forfeiture rules”).

9 Rule 55(c) provides in pertinent part, “The court may set aside an entry of default for good
10 cause[.]” Fed. R. Civ. P. 55(c). “To determine ‘good cause,’ a court must ‘consider[] three factors:
11 (1) whether [the party seeking to set aside the default] engaged in culpable conduct that led to the
12 default; (2) whether [it] had [no] meritorious defense; or (3) whether reopening the default judgment
13 would prejudice’ the other party.” *U.S. v. Signed Personal Check No. 730 of Yubran S. Mesle*, 615
14 F.3d 1085, 1091 (9th Cir. 2010) (*Mesle*). Having reviewed the pleadings and all competent and
15 admissible evidence submitted, the Court finds good cause to set aside the entry of Eagle’s default.

16 First, the Court finds no evidence in the record from which it could be said Eagle’s default
17 resulted from culpable conduct on her behalf. “The usual articulation of the governing standard, oft
18 repeated in our cases, is that ‘a defendant’s conduct is culpable if he has received actual or
19 constructive notice of the filing of the action and *intentionally* failed to answer’ [Citations.] [¶]
20 . . . [¶] . . . [W]hat we have meant is something [] like, in the words of a recent Second Circuit
21 opinion addressing the same issue, ‘willful, deliberate, or evidence of bad faith.’” *TCI Group Life*
22 *Ins. Plan v. Knoebber*, 244 F.3d 691, 697 (9th Cir. 2001) (quoting *American Alliance Ins. Co. v.*
23 *Eagle Ins. Co.*, 92 F.3d 57, 61 (2d Cir. 1996)) (emphasis original). Therefore, “we have typically
24 held that a defendant’s conduct was culpable . . . where there is no explanation of the default
25 inconsistent with a devious, deliberate, willful, or bad faith failure to respond.” *Id.* at 698. Eagle
26 defaulted because she failed to file a verified claim and answer to the government’s complaint within
27 the time allotted by the Supplemental Rules, but nothing suggests this failure was attributable to any

1 willfulness or bad faith. Instead, the fact Eagle did file a verified – albeit untimely – claim and has
2 made multiple appearances in an attempt to litigate this action suggests she failed to comply with
3 the Supplemental Rules filing deadlines simply because she was unfamiliar with the legal system.

4 The Court further finds Eagle has raised a meritorious defense. “All that is necessary to
5 satisfy the ‘meritorious defense’ requirement is to allege sufficient facts that, if true, would constitute
6 a defense: ‘the question whether the factual allegation [i]s true’ is not be determined by the court
7 when it decides the motion to set aside the default. [Citation.] Rather, that question ‘would be the
8 subject of the later litigation.’ [Citation.]” *Mesle, supra*, 615 F.3d at 1094; this burden “is not
9 extraordinarily heavy.” *TCI Group Life Ins. Plan, supra*, 244 F.3d at 700 (citing *In re Stone*, 588
10 F.2d 1316, 1319 n. 2 (10th Cir. 1978)). In her objections to the findings and recommendations,
11 Eagle alleges she is an innocent owner of the property and that the illicit activities thereon were
12 conducted not by her but by the tenants to whom she had rented the property. An innocent owner
13 defense is a legitimate defense to a civil forfeiture action. *See* 18 U.S.C. § 983(d).

14 Lastly, the Court finds no cognizable prejudice would result to the government if Eagle’s
15 claim were allowed to proceed. “To be prejudicial, the setting aside of a [default] must result in
16 greater harm than simply delaying resolution of the case. Rather, ‘the standard is whether
17 [plaintiff’s] ability to pursue his claim will be hindered.’” *TCI Group Life Ins. Plan, supra*, 244 F.3d
18 at 701 (quoting *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984)); *see Thompson v. American Home*
19 *Assur. Co.*, 95 F.3d 429, 433 (6th Cir. 1996) (“[F]or the setting aside of a default . . . to be
20 considered prejudicial, it must result in more than delay. Rather, the delay must result in tangible
21 harm such as loss of evidence, increased difficulties of discovery, or greater opportunity for fraud
22 or collusion”). The government has not alleged – and the Court cannot envision – how its ability to
23 prosecute this action would be hindered by setting aside the default, nor has it alleged the delay
24 would result in any prejudice of the type recognized in *Thompson, supra*. Based on the foregoing,
25 and in light of the policy that cases be heard on their merits, the government’s application for entry
26 of default judgment and final judgment must be denied and Eagle’s default vacated.

1 **V. DISPOSITION**


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3 Based on the foregoing, the Court respectfully declines to adopt the findings and recommendations
4 issued August 30, 2012. Accordingly, the government's application for entry of default judgment
5 and final judgment is DENIED. The Court hereby VACATES Eagle's default and ORDERS Eagle
6 to file a new verified claim and answer to the complaint within seven days of entry of this order. The
7 Court reserves jurisdiction to issue in favor of the government and against Eagle, as a condition of
8 vacating the default, an award of attorneys' fees and costs reasonably incurred by the government
9 in connection with the default proceedings pending further order of the Court or trial of the action.

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11 IT IS SO ORDERED.

12 Dated: November 20, 2012

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15 UNITED STATES DISTRICT JUDGE