



1 **II. LEGAL ANALYSIS**

2 1. Fed. R. Civ. P. 55(a)

3 Fed. R. Civ. P. 55(a) requires that a party must petition the court for an entry of  
4 default before it may be entered. Also, for the clerk to make an entry of default against a  
5 party, that party must have “failed to plead or otherwise defend.” *Id.*

6 Because Defendant’s Answer is on file, Defendant has not failed to plead its case and  
7 does not meet the requirements for an entry of default under Fed. R. Civ. P. 55(a).

8 2. Fed. R. Civ. P. 55(c)

9 Furthermore, a grant of default judgment would unnecessarily delay these proceedings  
10 and would inhibit the efficiency of the Court because default would likely be set aside later  
11 under Fed. R. Civ. P. 55(c). The Rule provides that the Court may set aside an entry of  
12 default for “good cause.” *Id.* The Court examines three factors in deciding whether there  
13 is good cause: “whether the defendant’s culpable conduct led to the default; whether the  
14 defendant has a meritorious defense; and whether reopening the default judgment would  
15 prejudice the plaintiff.” *TCI Group Life Ins. Plan v. Knoebber*, 244 F.3d 691, 696 (9th Cir.  
16 2001). Moreover, the Court favors settling disputes based on their merits whenever possible.  
17 *Id.*

18 *a. Culpable Conduct*

19 “A defendant’s conduct is culpable if he has received actual or constructive notice of  
20 the filing of the action and intentionally failed to answer.” *Knoebber*, 244 F.3d at 697  
21 (quoting *Alan Neuman Prods., Inc. v. Albright*, 862 F.2d 1388, 1392 (9th Cir. 1988)). In this  
22 context, intentional conduct connotes more than a conscious choice; rather it is akin to  
23 conduct that is willful, deliberate, or done in bad faith. *Id.* at 697-98. “Neglectful failure to  
24 answer as to which the defendant offers a credible, good faith explanation negating any  
25 intention to take advantage of the opposing party, interfere with judicial decisionmaking, or  
26 otherwise manipulate the legal process is not ‘intentional’ under our [Circuit’s] default cases,  
27 and is therefore not *necessarily* . . . culpable or inexcusable.” *Id.* (emphasis in original). “In  
28 contrast, courts have typically held that a defendant’s conduct was culpable . . . where there

1 is no explanation of the default inconsistent with a devious, deliberate, willful, or bad failure  
2 to respond.” *Id.* at 698.

3 In the instant case, Defendant’s counsel had only been retained one week prior to the  
4 filing deadline and had requested an extension from Plaintiff, to which they received no  
5 response. Defendant acted in good faith and showed no intention of taking advantage of  
6 Plaintiff or this Court through its delay. Thus, while Defendant’s conduct may have been  
7 neglectful in waiting to retain counsel so close to a filing deadline, it was not culpable.

8 *b. Meritorious Defenses*

9 “A defendant seeking to vacate a default judgment must present specific facts that  
10 would constitute a defense.” *Knoebber*, 244 F.3d at 700. The defendant’s burden in this  
11 respect “is not extraordinarily heavy.” *Id.*

12 Here, Defendant has stated a valid defense of *res judicata* that is supported by specific  
13 facts. The Court should thus have the opportunity to decide the case on its merits.

14 *c. Prejudice to Plaintiff*

15 “To be prejudicial, the setting aside of a judgment must result in greater harm than  
16 simply delaying resolution of the case.” *Id.* at 701. Thus, the Court examines whether the  
17 delay in setting aside the judgment will hinder the plaintiff’s ability to pursue the claim. *Id.*

18 In this case, the Court had not yet set any deadlines when Plaintiff filed her Motions,  
19 so Defendant’s tardiness in filing its Answer did not delay discovery or impede Plaintiff’s  
20 ability to pursue her claim in any way.

21 **III. CONCLUSION**

22 Based on the foregoing factors and the general preference for resolving cases on their  
23 merits, the Court concludes that any default in this case would be set aside and so the Motion  
24 to Strike and Motion for Entry of Default should be denied.

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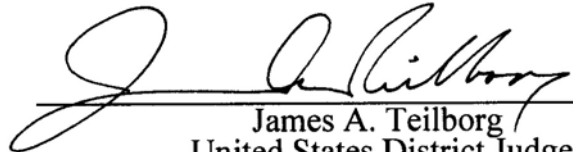
1 Accordingly,

2 IT IS HEREBY ORDERED DENYING Plaintiff's Motion to Strike Answer (Doc.  
3 #17) and for Entry of Default Judgment Against Defendant (Doc. #16).

4 DATED this 19th day of February, 2010.

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James A. Teilborg  
United States District Judge

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