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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8 Donald J Gregory,

9 Plaintiff,

10 v.

11 Kathryn Harris; and Veronica M. Hart
12 Ragland, Arizona Division of Child Support
13 Enforcement Assistant Director,

14 Defendants.

No. CV11-0372 PHX DGC

ORDER

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16 On May 27, 2011, Plaintiff Donald J. Gregory filed an amended complaint
17 alleging that Defendants Kathryn Harris and Veronica Ragland violated his constitutional
18 rights. Doc. 11 at 2. The complaint also contains various state law claims. *Id.* Plaintiff
19 served Defendants' summons on the Arizona Attorney General's Office. Doc. 12; Doc.
20 14. Plaintiff did not attempt to serve Defendants individually. Defendants failed to
21 respond to the complaint, and Plaintiff moved for default, which was entered by the Clerk
22 on October 4, 2011. Doc. 18; Doc. 19.

23 Before the Court is Defendants' motion to set aside the default. Doc. 20.
24 Defendants argue that the default is void for lack of service under Federal Rule of Civil
25 Procedure 4(e) because they were never personally served with the amended complaint.
26 Alternatively, Defendants argue that even if service was properly completed, the default
27 should be set aside for good cause under Rule 55(c). Plaintiff responds that Rule 4(e) is
28 satisfied so long as service is done in accordance with applicable state law. Doc. 21 at 2.

1 Plaintiff contends that Arizona Rule of Civil Procedure 4.1(j) authorized him to serve
2 Defendants by serving the Attorney General, who is the “representative and legal officer
3 for [the Arizona Division of Child Support Enforcement].” *Id.* Plaintiff concedes that he
4 did not properly serve Defendant Harris and requests more time to serve her. *Id.*
5 Defendants argue that although the Attorney General is able to accept service on behalf
6 of the State, Defendants as individuals are entitled to personal service and have not
7 authorized the Attorney General to accept service on their behalf. Doc. 22.

8 The parties have not requested oral argument. For the reasons stated below, the
9 Court will grant the motion.

10 **I. Legal Standards.**

11 Rule 4 of the Federal Rules of Civil Procedure “governs the commencement of an
12 action and the service of process.” *Employee Painters’ Trust v. Ethan Enters., Inc.*, 480
13 F.3d 993, 999 (9th Cir. 2007). Rule 4(e) provides the appropriate avenues for serving
14 individuals. Service can be accomplished by: (1) “following state law for serving a
15 summons in an action brought in courts of general jurisdiction in the state where the
16 district court is located”; (2) “delivering a copy of the summons and of the complaint to
17 the individual personally”; (3) “leaving a copy of each at the individual’s dwelling or
18 usual place of abode with someone of suitable age and discretion who resides there”; or
19 (4) “delivering a copy of each to an agent authorized by appointment or by law to receive
20 service of process.” Fed. R. Civ. P. 4(e). State law allows for serving governmental
21 entities by serving the “person, officer, group or body responsible for the administration
22 of that entity or by serving the appropriate legal officer, if any, representing that entity.”
23 Ariz. R. Civ. P. 4.1(j).

24 Rule 5 “governs service of ‘every pleading subsequent to the original complaint.’”
25 *Employee Painters’ Trust*, 480 F.3d at 999. An amended complaint is a “pleading
26 subsequent to the original complaint.” *Id.* Rule 5 provides more ways to complete
27 service than Rule 4, including using court facilities such as the ECF system if authorized
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1 by local rule. Fed. R. Civ. P. 5(b)(3). Local Rule 5.5(h) states that “registration as an
2 ECF user constitutes consent to the electronic service of all documents through the
3 Court’s transmission facilities for purposes of Rule 5(b)(3) of the Federal Rules of Civil
4 Procedure.” LRCiv 5.5(h). Additionally, “[u]nless otherwise ordered by the Court or as
5 provided by the Administrative Manual, electronic filing is mandatory for attorneys.”
6 LRCiv 5.5(c).

7 Rule 55(c) allows a court to “set aside an entry of default for good cause.” Fed. R.
8 Civ. P. 55(c). Courts consider three factors in deciding whether good cause exists:
9 (1) whether the moving party engaged in culpable conduct; (2) whether the moving party
10 has a meritorious defense; and (3) whether setting aside the default will prejudice the
11 non-moving party. *TCI Group Life Ins. Plan v. Knoebber*, 244 F.3d 691, 696 (9th Cir.
12 2001) (citations omitted). The test is disjunctive; if any factor weighs in favor of the non-
13 moving party, courts may deny the motion. *Am. Ass’n of Naturopathic Physicians v.*
14 *Hayhurst*, 227 F.3d 1104, 1108 (9th Cir. 2000) (citations omitted). The moving party
15 bears the burden of proving that the three factors weigh in favor of setting aside default.
16 *Franchise Holding II, LLC. v. Huntington Rest. Grp.*, 375 F.3d 922, 926 (9th Cir. 2004).

17 **II. Analysis**

18 Defendant Ragland, as a party that has already appeared and responded to the
19 original complaint, was entitled to service under Rule 5, not Rule 4. Defendant Harris
20 was entitled to service under Rule 4 because she was not a party to the original
21 complaint.

22 **A. Defendant Harris.**

23 Plaintiff served the Attorney General’s office and cites Arizona’s Rule 4.1(j) as
24 authority for such service. Plaintiff’s attempt to serve Harris under this rule was
25 ineffective under Arizona law and therefore does not satisfy Federal Rule 4(e)(1).
26 Rule 4.1(j) applies only to service of governmental entities. Harris was entitled to
27 personal service. The Court will set aside default as to Defendant Harris.
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1 **B. Defendant Ragland.**

2 An amended complaint is a “pleading subsequent to the original complaint,” and
3 thus must be served under Rule 5, not Rule 4. *Employee Painters’ Trust*, 480 F.3d at
4 999. Defendant Ragland is represented by counsel who is a registered ECF user, as
5 required by the Court’s local rules. The amended complaint was filed in the ECF system
6 on May 27, 2011, and the Court’s records show that a Notice of Electronic Filing was
7 electronically sent to Ragland’s counsel. The ECF filing of Plaintiff’s amended
8 complaint satisfies Rule 5.

9 Because Ragland was properly served, the Court must decide whether the default
10 should be set aside for good cause under Rule 55(c). Ragland argues that all three good
11 cause factors weigh in favor of setting aside the default. Plaintiff takes issue with only
12 one factor – whether Ragland has a meritorious defense. Plaintiff presents no evidence
13 that Ragland engaged in culpable conduct and no argument that Plaintiff would be
14 prejudiced by setting aside the default.

15 The burden in proving a meritorious defense is not heavy. *TCI Group Life Ins.*
16 *Plan*, 244 F.3d at 700 (citation omitted). The moving party need only show facts that, if
17 true, would constitute a defense. *Id.* Here, Plaintiff claims that an order for child support
18 needed to be reduced to a judgment within three years, or else it expired. Doc. 21 at 2.
19 Ragland responds that the law has changed, and that under the current version of A.R.S.
20 § 25-301(I), a support order becomes enforceable “by operation of law.” Doc. 20 at 9.
21 Ragland’s assertions, if true, would constitute a defense. Thus, Ragland has met her
22 burden in showing a meritorious defense. Because the other two factors also weigh in
23 favor of setting aside the default, the Court will set aside Defendant Ragland’s default.

24 **IT IS ORDERED:**

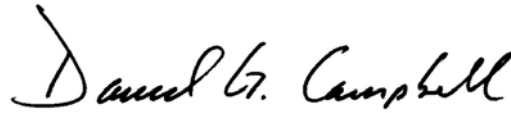
- 25 1. The motion to set aside default (Doc. 20) is **granted** with respect to
26 Defendant Ragland.
27 2. Plaintiff’s motion for default judgment and judgment (Doc. 18) is **denied**
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as moot.

3. Plaintiff will have until **January 13, 2012**, to serve Defendant Harris in accordance with Federal Rule of Civil Procedure 4. **The Court will not extend this deadline absent truly extraordinary circumstances.**

Dated this 13th day of December, 2011.



David G. Campbell
United States District Judge