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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Yolanda Denise Smith,

10 Plaintiff,

11 v.

12 Joseph Leynard Smith,

13 Defendant.

No. CV-13-02611-PHX-DGC

**ORDER**

14  
15 Before the Court are Plaintiff's motion for default judgment (Doc. 9) and  
16 Defendant's motion to vacate the clerk's entry of default (Doc. 11). The Court will  
17 construe Defendant's motion as a response to Plaintiff's motion and as a motion to set  
18 aside the entry of default under Federal Rule of Civil Procedure 55(c). The Court will  
19 grant Defendant's motion and deny Plaintiff's motion for default judgment as moot.

20 **I. Background.**

21 On December 20, 2013, Plaintiff Yolanda Smith filed a complaint for breach of  
22 contract. Doc. 1. On February 4, 2014, Plaintiff requested that the Clerk enter default  
23 against Defendant pursuant to Rule 55(a) for failing to plead or otherwise defend the  
24 action. Doc. 7. The Clerk entered default on February 5, 2014. Doc. 8. That same day,  
25 Plaintiff filed a motion for default judgment. Doc. 9. On March 3, 2014, Defendant filed  
26 a notice of appearance and motion to vacate default judgment. Doc. 10. On March 25,  
27 2014, he filed an amended notice of appearance and motion to vacate the clerk's entry of  
28 default. Doc. 11.

1     **II.     Legal Standard.**

2             Federal Rule of Civil Procedure 55(c) allows a court to “set aside an entry of  
3     default for good cause[.]” Fed. R. Civ. P. 55(c). Courts consider three factors in  
4     deciding whether good cause exists: (1) whether the moving party engaged in culpable  
5     conduct; (2) whether the moving party has a meritorious defense; and (3) whether setting  
6     aside the default will prejudice the non-moving party. *TCI Grp. Life Ins. Plan v.*  
7     *Knoebber*, 244 F.3d 691, 696 (9th Cir. 2001) (citations omitted). The moving party bears  
8     the burden of proving that the three factors weigh in favor of setting aside default.  
9     *Franchise Holding II, LLC. v. Huntington Rest. Grp.*, 375 F.3d 922, 926 (9th Cir. 2004).  
10    This burden, however, is not “extraordinarily heavy.” *TCI Grp.*, 244 F.3d at 700. “A  
11    case should, whenever possible, be decided on the merits.” *Id.* at 697.

12    **III.    Analysis.**

13             **A.     Culpable Conduct.**

14             “A defendant's conduct is culpable if he has received actual or constructive notice  
15    of the filing of the action and *intentionally* failed to answer.” *Id.* at 697 (citations  
16    omitted). Intentional conduct, in this context, must rise to the level of conduct which is  
17    willful, deliberate, or done in bad faith. *Id.* at 697-98. Defendant asserts that he failed to  
18    respond to Plaintiff’s complaint because he was unaware that a breach of contract claim  
19    had been filed against him in this Court. Doc. 11 at 1-2. Proceeding pro se at the time,  
20    Defendant asserts that all previous legal matters between him and Plaintiff had occurred  
21    in state court. *Id.* at 2. Thus, when he received an envelope from Plaintiff containing  
22    legal documents, he failed to distinguish between the Petition for Modification of  
23    Custody and Child Support filed in state court and the breach of contract claim filed in  
24    this Court. *Id.* at 1-3. Defendant therefore filed a response only in state court. *Id.* at 4.  
25    Defendant asserts that he did not learn about the complaint filed in this Court until after  
26    he had secured legal counsel on February 25, 2014. *Id.* at 4-5. Because nothing about  
27    Defendant’s conduct suggests a “devious, deliberate, willful, or bad faith failure to  
28    respond,” the Court finds that his conduct was not culpable. *TCI Grp.*, 244 F.3d at 698.

1           **B. Meritorious Defense.**

2           “All that is necessary to satisfy the ‘meritorious defense’ requirement is to allege  
3 sufficient facts that, if true, would constitute a defense[.]” *United States v. Signed*  
4 *Personal Check No. 730 of Yubran S. Mesle*, 615 F.3d 1085, 1094 (9th Cir. 2010)  
5 (citation omitted). Plaintiff alleges that she entered into a contract with Defendant  
6 regarding the division of certain property, including the disposition of a residence in  
7 Scottsdale. Doc. 1, ¶¶ 6, 7, 9. Plaintiff alleges that Defendant breached the contract by  
8 failing to participate in the refinancing of the residence and by failing to pay for repairs.  
9 Doc. 1, ¶¶ 13, 16. Defendant asserts that did not breach the contract because he signed  
10 and transferred all the documents pertaining to the refinancing of the residence. Doc. 11  
11 at 4. Defendant also contends that he has not received repair estimates, request for  
12 reimbursement, or a demand for payment from Plaintiff. *Id.* at 4-5. These allegations,  
13 accepted as true, satisfy the meritorious defense requirement.

14           **C. Prejudice.**

15           “To be prejudicial, the setting aside of a judgment must result in greater harm than  
16 simply delaying resolution of the case.” *TCI Grp.*, 244 F.3d at 701. “[T]he standard is  
17 whether [Plaintiff's] ability to pursue [her] claim will be hindered.” *Id.* (citations  
18 omitted). Plaintiff asserts that, absent a default judgment, Plaintiff will have “no means  
19 of pursuing Defendant for his violations of the Contract.” Doc. 9 at 5-6. Plaintiff can  
20 pursue Defendant for the alleged breach of contract by proving the merits or her claim.

21           This Circuit’s “rules for determining when a default should be set aside are  
22 solicitous towards movants,” especially where, as in this case, the “actions leading to the  
23 default were taken without the benefit of legal representation.” *Mesle*, 615 F.3d at 1089.  
24 Whenever possible, a case should be decided on the merits and judgment by default is  
25 “appropriate only in extreme circumstances[.]” *Id.* Because extreme circumstances do  
26 not exist here, the Court will set aside default.

27           **IT IS ORDERED:**

- 28           1.       The motion to set aside default (Doc. 11) is **granted**.

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- 2. Plaintiff's motion for default judgment (Doc. 9) is **denied as moot.**
- 3. Defendant shall file his answer on or before **May 9, 2014.**

Dated this 23rd day of April, 2014.



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David G. Campbell  
United States District Judge