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

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8 G & G Closed Circuit Events LLC,  
9 Plaintiff,  
10 v.  
11 Francisca Gonzalez Arvizu, *et al.*,  
12 Defendants.

No. CV-18-00671-PHX-JJT

**ORDER**

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14 At issue is Plaintiff's Application for Default Judgment by the Court (Doc. 17,  
15 Mot.), to which Defendant filed a Response (Doc. 19, Resp.) and Plaintiff filed a Reply  
16 (Doc. 20, Reply).

17 **I. FACTUAL BACKGROUND**

18 Plaintiff G&G Closed Circuit Events, LLC was granted exclusive contractual rights  
19 to the nationwide distribution of a boxing match which aired on May 6, 2017 ("the  
20 Program"). (Doc. 1, Compl. ¶ 16.) Defendant Francisca Gonzalez Arvizu owns Taco Mich,  
21 a restaurant and bar in Phoenix. (Compl. ¶ 12.) In its Complaint, Plaintiff alleges that  
22 Defendant unlawfully intercepted and broadcast the Program at Taco Mich, and that the  
23 broadcast "resulted in increased profits for Taco Mich." (Compl. ¶¶ 11, 13.) Plaintiff seeks  
24 damages under Title 47 U.S.C. §§ 605(e) and 553. (Compl. ¶¶ 15–29.)

25 Plaintiff filed its Complaint on March 1, 2018 and executed service on Defendants  
26 Gonzalez Arvizu and Taco Mich on April 27, 2018. (Compl, Doc. 13.) Defendants failed  
27 to answer or otherwise appear in their defense. On May 14, 2018, Plaintiff filed an  
28 Application for Entry of Default (Doc. 14). The Clerk of Court entered default against

1 Defendants on May 15, 2018 (Doc. 15). Plaintiff timely filed a Motion for Default  
2 Judgment as to both Defendants on July 12, 2018 (Mot.). On July 30, Defendants filed a  
3 Response (Resp.) Plaintiff then filed a Reply, arguing that because default has already been  
4 entered, Defendants are barred from appearing or presenting evidence. (Reply at 2.)

5 In their Response, Defendants allege that Plaintiff cannot prove its damages because  
6 it lacks supporting evidence. (Resp. at 2–4.) Defendants assert that Plaintiff’s investigator,  
7 Amanda Hidalgo (“Hidalgo”) misrepresented the events of May 6, 2017 in her affidavit in  
8 support of Plaintiff’s allegation. (Resp. at 2.) Defendants argue that Hidalgo could not  
9 possibly have been at Taco Mich between 9:11 and 9:17 p.m. when she claims she saw the  
10 Program being unlawfully broadcast but then arrive at a different establishment seven miles  
11 away at 9:15. (Resp. at 2.) Defendant also argues that Plaintiff’s contract with the third  
12 party (“Promoter”) who conveyed to Plaintiff rights to nationally broadcast the Program,  
13 did not provide Plaintiff any rights to broadcasts of the Program in languages other than  
14 English. (Resp. at 3.) Defendant alleges that, if the Program was broadcast at Taco Mich,  
15 it was in Spanish, and therefore Plaintiff would not have any rights to that broadcast. (Resp.  
16 at 3.)

17 In its Reply, Plaintiff responds to Defendants’ two points, but argues in the  
18 alternative that “Defendant’s Opposition should be disregarded in its entirety” because  
19 once in default, Defendants had no right to participate in the litigation. (Reply at 2.)  
20 Plaintiff seeks entry of default judgment in a total amount of \$60,000 for violations of 47  
21 U.S.C. §§ 605(e)(3)(C)(i)(II) and (ii). (Mot. at 3.)

## 22 II. LEGAL STANDARD

23 When a party against whom relief is sought fails to defend against the claim, the  
24 court may enter default against that party. Fed. R. Civ. P. 55(a). After entry of default, the  
25 other party may move for entry of default judgment, which will stand as a final judgment  
26 in the case. Fed. R. Civ. P. 55(b). But at either stage—entry of default or entry of default  
27 judgment—the party against whom default was entered has an avenue for relief. “The court  
28 may set aside an entry of default for good cause, and may set aside a final default judgment

1 under Rule 60(b).” Fed. R. Civ. P. 55(c). Rule 60(b) lays out specific grounds for relief,  
2 but “[t]he different treatment of default entry . . . by Rule 55(c) frees a court considering a  
3 motion to set aside a default entry from the restraint of Rule 60(b) and entrusts  
4 determination to the discretion of the court.” *Haw. Carpenters’ Trust Funds v. Stone*, 794  
5 F.2d 508, 513 (9th Cir. 1986). Thus, while courts have held that the possible reasons for  
6 relief under Rule 55 and Rule 60 are roughly equivalent, “the standards for setting aside  
7 entry of default under Rule 55(c) are less rigorous than those for setting aside a default  
8 [judgment].” *Id.* And in any case, reaching entry of default judgment is “appropriate only  
9 in extreme circumstances [because] a case should, whenever possible, be decided on the  
10 merits.” *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

11 The party seeking to set aside entry of default under Rule 55(c) must show that any  
12 one of three factors favors their motion. *Franchise Holding II, LLC v. Huntington Rest.*  
13 *Grp., Inc.*, 375 F.3d 922, 925–26 (9th Cir. 2004). The three factors are: (1) whether the  
14 party against whom default was entered “engaged in culpable conduct that led to the  
15 default;” (2) “whether [that party] had a meritorious defense; or (3) whether reopening the  
16 default judgment would prejudice” the party in whose favor default was entered. *Id.* at 926.  
17 “As these factors are disjunctive, the district court [is] free to deny the motion ‘if any of  
18 the three factors [is] true.’” *Id.* (quoting *Amer. Ass’n of Naturopathic Physicians v.*  
19 *Hayhurst*, 227 F.3d 1104, 1108 (9th Cir. 2000)).

20 In order to justify vacating default on the grounds that it had a meritorious defense,  
21 the party so moving must “present the district court with specific facts that would constitute  
22 a defense.” *Id.* (citing *Madsen v. Bumb*, 419 F.2d 4, 6 (9th Cir. 1969)).

### 23 **III. ANALYSIS**

24 Plaintiff is not misguided in its argument that Defendant’s Response constitutes an  
25 argument on the merits that it is not normally permitted after default has been entered.  
26 (Reply at 2.) But Defendants are within their rights to seek relief under Rule 55(c), which  
27 governs when default has been entered but there is not yet a final default judgment. In  
28 substance, Defendant’s Response comports with Rule 55(c) and addresses the appropriate

1 factors that the Court considers when ruling on a Motion to Set Aside Default. Thus, the  
2 Court will treat Defendant’s Response as a Motion to Set Aside a Default under Rule 55(c)  
3 and will treat Plaintiff’s Reply as a Response to that Motion.

4 Defendants need only show that one of the three factors outlined above justifies  
5 vacating default. Defendants seem to have only addressed the existence of a meritorious  
6 defense. Thus, the Court will not determine whether Defendants “engaged in culpable  
7 conduct that led to the default”<sup>1</sup> or “whether reopening the [default] would prejudice”  
8 Plaintiff. *Franchise Holding II, LLC*, 375 F.3d at 926.

9 Defendants assert two possible defenses. First, they argue that Plaintiff’s  
10 investigator, Hidalgo, could not possibly have been at Taco Mich from 9:11 to 9:17 if she  
11 arrived at a second establishment by 9:15. (Resp. at 2–3.) Second, Defendants argue that  
12 Plaintiff had no rights to a broadcast of the Program in Spanish, and thus Defendants could  
13 not have infringed upon Plaintiff’s exclusive broadcast rights. (Resp. at 3.) The Court need  
14 not determine at this stage whether these defenses are winning arguments—only whether  
15 they are meritorious. The Court finds that Defendants did indeed allege sufficient facts to  
16 constitute a meritorious defense to Plaintiff’s claim. *See Madsen v. Bumb*, 419 F.2d 4, 6  
17 (9th Cir. 1969) (requiring more than “a mere general denial without facts to support it” in  
18 order to set aside entry of default), *see also Haw. Carpenters’ Trust Funds*, 794 F.2d at 513  
19 (instructing that the meritorious defense requirement be “liberally interpreted when used  
20 on a motion for relief from an entry of default.”).

#### 21 **IV. CONCLUSION**

22 Treated as a Motion to Set Aside Entry of Default, Defendants’ Response presents  
23 facts that contradict Plaintiff’s claims and collectively constitute a meritorious defense  
24 under Rule 55(c). The Court will vacate the entry of default and Defendant will file an  
25 Answer to Plaintiff’s Complaint so that this case may be decided on its merits. Given that

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27 <sup>1</sup> While Defendants did not need to address their potentially culpable conduct in  
28 order to justify vacating the entry of default, the Court acknowledges that Defendants’  
failure to answer Plaintiff’s Complaint or participate in litigation prior to the entry of  
default might merit an award of sanctions if they cannot show good cause for their failure  
to defend against Plaintiff’s claim.

1 entry of default in favor of Plaintiff is vacated, Plaintiff is not entitled to attorneys' fees  
2 and costs as a prevailing party at this time.


3 IT IS THEREFORE ORDERED denying Plaintiff's Motion for Default Judgment  
4 (Doc. 17).

5 IT IS FURTHER ORDERED vacating the Entry of Default (Doc. 15).

6 IT IS FURTHER ORDERED that Defendant shall file an Answer to Plaintiff's  
7 Complaint (Doc. 1) by February 20, 2019.

8 IT IS FURTHER ORDERED that Defendants shall show cause why they should  
9 not be sanctioned for failing to defend against Plaintiff's claims and forcing Plaintiff to  
10 incur the expense of filing its Motion for Default Judgment. Defendants shall show cause  
11 by February 13, 2019.

12 Dated this 5th day of February, 2019.

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15 Honorable John J. Tuchi  
16 United States District Judge  
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