

1 agreement under which Penavico was to provide cargo flights for DGS's benefit.
2 (Compl. ¶ 9.) As a result of Penavico performing its services, DGS owes Penavico
3 some \$734,425.88. (*Id.* ¶ 14.) This amount remains outstanding. (*Id.* ¶ 16.) DGS
4 also caused Penavico to incur a \$74,360 judgment in a Chinese court as the result of
5 failing to supply a proper bill of lading for one shipment. (*Id.* ¶¶ 17–20.)

6 Beginning in May 2013, Penavico requested that Jacob, a managing member of
7 DGS, account for DGS's capital and turn over accounting records. (*Id.* ¶ 22–24.)
8 Jacob never complied. (*Id.* ¶ 25.)

9 On August 30, 2013, Penavico filed suit against DGS and Jacob both on behalf
10 of itself and derivatively on behalf of DGS Logistics. (Not. of Removal Ex. A.)
11 Penavico alleged breach-of-contract and related claims against DGS and breach of
12 fiduciary duty against Jacob. (*Id.*) Defendants thereafter removed the action to this
13 Court. (ECF No 1.)

14 On October 17, 2013, Penavico served DGS with the summons and Complaint.
15 (Wu Decl. ¶ 4.) Since DGS never responded, the Clerk of Court entered default
16 against it per Penavico's request. (ECF Nos. 10, 11.) Jacob—not DGS—then filed
17 this Motion to Set Aside Entry of Default against DGS. (ECF No. 12.)

18 III. LEGAL STANDARD

19 Under Rule 55(c), a court may set aside entry of default for good cause. The
20 Ninth Circuit has identified three factors to consider in assessing Rule 55(c)'s good-
21 cause standard: (1) whether the moving party engaged in culpable conduct,
22 (2) prejudice to the nonmoving party, and (3) whether the moving party has any
23 meritorious defenses. *TCI Grp. Life Ins. Plan v. Knoebber*, 244 F.3d 691, 696 (9th
24 Cir. 2001). A finding of any one of these factors suffices to decline to set aside
25 default. *United States v. Signed Pers. Check No. 730 of Yubran S. Mesle*, 615 F.3d
26 1085, 1091 (9th Cir. 2010). But judgment by default is only appropriate in “extreme
27 circumstances,” as the Federal Rules of Civil Procedure favor judgment on the merits.
28 *Id.*

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IV. DISCUSSION

At the hearing on the Motion, the Court indicated that Jacob lacked standing to move to set aside default against DGS. Under Article III of the United States Constitution, federal courts can only hear actual cases and controversies. U.S. Const., art. III, § 2. Generally, that means that “a litigant must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties.” *U.S. Dep’t of Labor v. Triplett*, 494 U.S. 715, 720 (1990) (internal quotation marks omitted). Rather, to have standing to bring suit, a plaintiff must allege “(1) an injury that is (2) ‘fairly traceable to the defendant’s allegedly unlawful conduct’ and that is (3) ‘likely to be redressed by the requested relief.’” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 590 (1992).

The United States Supreme Court has recognized third-party standing in limited contexts. *Powers v. Ohio*, 499 U.S. 400, 410–11 (1991). The plaintiff must have suffered an “injury in fact” himself, have a close relationship to the third party, and “there must exist some hindrance to the third party’s ability to protect his or her own interests.” *Id.* at 411.

This case presents a seemingly insoluble, Seven Bridges of Königsberg problem. As a limited-liability company, DGS has a legal, corporate existence. But DGS is really only made up of Penavico—the plaintiff—and Jacob—one of the defendants. For DGS to do business, a natural person must act. It appears that both Penavico and Jacob must agree for DGS to hire counsel. So Penavico—the party which stands to gain the most from the default—has the power to veto whether DGS can obtain the counsel it needs to set aside default. Penavico seems to have exercised that veto, thus leaving DGS unrepresented. And it is well-settled that a company may not represent itself in federal court. *Rowland v. Cal. Men’s Colony, Unit II Men’s Advisory Council*, 506 U.S. 194, 201–02 (1993).

Jacob may want to set aside default as to DGS, but he lacks standing to do so. First, DGS is a separate legal entity from DGS. Jacob admits that much when he

1 himself moved to set aside DGS's default in his individual capacity. He therefore
2 does not have first-person standing to act for DGS.

3 Second, Jacob and his counsel have an inherent conflict of interest with DGS.
4 Not only has Penavico sued Jacob, but Penavico has also sued Jacob derivatively on
5 behalf of DGS. Jacob is thus both a friend and foe to DGS. In this Janus-esque
6 situation, Jacob's interests are not sufficiently aligned with DGS's interests to satisfy
7 the third-party-standing requirements. *See Pony v. Cnty. of L.A.*, 433 F.3d 1138, 1147
8 (9th Cir. 2006). Without anyone invoking proper Article III standing, the Court
9 cannot entertain whether Rule 55(c) favors setting aside DGS's default.

10 **V. CONCLUSION**

11 The Court therefore **DENIES** Jacob's Motion to Set Aside Entry of Default
12 **WITHOUT PREJUDICE**. (ECF No. 12.)

13 **IT IS SO ORDERED.**

14
15 February 4, 2014

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19 **OTIS D. WRIGHT, II**
20 **UNITED STATES DISTRICT JUDGE**