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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MARTIN CHRISTIAN MELIUS,)	CV 14-9251 RSWL (Ex)
)	
Plaintiff,)	
v.)	ORDER re: DEFENDANT
)	SWEDISH BOARD FOR STUDY
MIKAEL KOLTAI, an)	SUPPORT, a/k/a CSN's
individual; LAW OFFICES OF)	MOTION TO SET ASIDE
MIKAEL KOLTAI, an entity of)	ENTRY OF DEFAULT [63]
unknown type; ULF STAHL, an)	
individual; SWEDISH BOARD)	
FOR STUDY SUPPORT, a/k/a)	
CSN, an entity of unknown)	
type; and DOES 1 to 50,)	
inclusive,)	
)	
Defendant.)	

Currently before the Court is Defendant Swedish Board for Study Support's ("CSN") Motion to Set Aside Entry of Default [63], filed October 13, 2015. For the reasons discussed below, this Court **GRANTS** CSN's Motion to Set Aside Entry of Default [63].

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1 **I. BACKGROUND**

2 **A. Factual Background**

3 On June 11, 2014, the Kingdom of Sweden commenced a
4 lawsuit on behalf of CSN against Martin Christian Melius
5 ("Plaintiff") for breach of contract, common count for
6 money lent, and common count for money had and received,
7 arising from Plaintiff's alleged failure to repay past-
8 due student loans he received from CSN.¹ Plaintiff then
9 filed the present action against Mikael Koltai
10 ("Koltai"), Law Offices of Mikael Koltai, W. Ernest
11 Mooney ("Mooney"), Law Offices of W. Ernest Mooney, Ulf
12 Stahl ("Stahl"), and CSN (collectively "Defendants") for
13 alleged violations of the Federal Fair Debt Collection
14 Practices Act, 15 U.S.C. § 1692 et seq. ("FDCPA"),
15 California's Rosenthal Fair Debt Collection Practices
16 Act, Cal Civ. Code § 1788 et seq. ("Rosenthal Act"), and
17 actions that allegedly constitute "Invasion of Privacy
18 by Intrusion upon Seclusion and by Revelation of Private
19 Financial Facts to Third Parties." Compl., ECF No. 1.

20 **B. Procedural Background**

21 On December 02, 2014, Plaintiff filed its Complaint
22 against Defendants [1]. On January 13, 2015, Plaintiff
23 filed a Notice of Dismissal as to Defendants Mooney and
24 Law Offices of W. Ernest Mooney, pursuant to Federal
25 Rule of Civil Procedure 41(a)(1) [12]. On January 13,
26 2015, Plaintiff filed its First Amended Complaint

27 _____
28 ¹See Kingdom of Sweden v. Martin Christian Melius, No. 2:14-
cv-04492-RSWL-E.

1 ("FAC") against defendants Koltai, Law Offices of Mikael
2 Koltai, Stahl, and CSN [13]. On January 29, Plaintiff
3 requested that the Clerk of Court enter default against
4 Law Offices of Mikael Koltai [28]. On February 2, 2015,
5 default was entered by the Clerk as to Law Offices of
6 Mikael Koltai [30]. On February 14, 2015, Mikael Koltai
7 filed his Motion to Set Aside Entry of Default as to Law
8 Offices of Mikael Koltai [32]. On April 8, 2015, this
9 Court granted the Motion to Set Aside Default and denied
10 as moot Plaintiff's Application for Default Judgment
11 against Law Offices of Mikael Koltai [46]. On September
12 20, 2015, Plaintiff requested that the Clerk of Court
13 enter default against Defendant CSN [59]. On October
14 07, 2015, this Court granted Plaintiff's Request to
15 Enter Default [61]. On October 13, 2015, Defendant CSN
16 filed its Motion to Set Aside Entry of Default [63]. On
17 October 27, 2015, CSN filed a Notice of Non-Opposition
18 by Plaintiff to Defendant's Motion to Set Aside Entry of
19 Default [64].

20 II. ANALYSIS

21 A. Legal Standards

22 1. Motion to Set Aside Entry of Default

23 The Federal Rules of Civil Procedure provide that a
24 "court may set aside an entry of default" upon a showing
25 of "good cause". Fed. R. Civ. Pro. 55(c). To determine
26 whether "good cause" exists, a court must consider the
27 following three factors: "(1) whether [the party seeking
28 to set aside the default] engaged in culpable conduct

1 that led to the default; (2) whether [it] had [no]
2 meritorious defense; or (3) whether reopening the
3 default judgment would prejudice the other party."
4 United States v. Signed Personal Check No. 730 of Yubran
5 S. Mesle, 615 F.3d 1085, 1091 (9th Cir. 2010) (citing
6 Franchise Holding II, LLC v. Huntington Rests. Grp.,
7 Inc., 375 F.3d 922, 925-926 (9th Cir. 2004)). "[A]
8 finding that any one of these factors is true is
9 sufficient reason for the district court to refuse to
10 set aside the default." Id. Finally, the Ninth Circuit
11 has emphasized the strong policy of "deciding cases on
12 the merits whenever possible," and has stated that
13 "'judgment by default is a drastic step appropriate only
14 in extreme circumstances; a case should, whenever
15 possible, be decided on the merits.'" Id. at 1091.

16 2. Timing of a Responsive Pleading

17 Federal Rule of Civil Procedure 12(a) prescribes
18 that a defendant must serve an answer "within 21 days
19 after being served with the summons and complaint."
20 Fed. R. Civ. P. 12(a)(1)(A)(I). However, pursuant to
21 the Foreign Sovereign Immunities Act ("FSIA"), in an
22 action brought against any foreign state, or political
23 subdivision, agent, or instrumentality of a foreign
24 state, the foreign entity shall have sixty days to serve
25 an answer or other responsive pleading to the complaint.
26 28 U.S.C. § 1608(d).

27 **B. Discussion**

28 1. Plaintiff was not entitled to default against

1 CSN at the time it was requested.

2 As discussed above, ordinarily a defendant must
3 serve an answer within 21 days after being served with
4 the summons and complaint. However, under FSIA, a
5 foreign state, or an agency or instrumentality of a
6 foreign state, is entitled to 60 days to file its
7 responsive pleading. 28 U.S.C. § 1608(d).

8 Upon review of the Svensson Declaration and the
9 Zipser Declaration², it is clear that CSN is a Swedish
10 government agency, and accordingly, is entitled to the
11 extended responsive pleading deadline set forth in 28
12 U.S.C. § 1608(d). On August 18, 2015, Plaintiff's
13 counsel served copies of the Summons, Complaint, and FAC
14 on Ms. Helena Fallman, an employee of CSN. Svensson
15 Decl. ¶¶ 10-11; Zipser Decl. ¶ 6. Therefore, CSN was
16 permitted to file a responsive pleading up until October
17 17, 2015.

18 Furthermore, it is clear from the Zipser
19 Declaration that CSN informed Plaintiff that it is a
20 foreign agency, and as such, is entitled to a 60 day
21 responsive pleading deadline under FSIA. Zipser Decl. ¶
22 8. CSN notes that "Mr. Stone did not dispute
23 [Defendants'] statement concerning the response date."
24 Id. Additionally, Plaintiff has not filed an opposition
25 to the present Motion.

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27 ²See Mot. to Set Aside Default, Declaration of Ake Svensson
28 ("Svensson Declaration"), ¶¶ 3-7 [63-1]; see also id.,
Declaration of Dean J. Zipser ("Zipser Declaration"), ¶¶ 2-4 [63-
2].

1 This Court finds that it is appropriate to set
2 aside the default entered against CSN because CSN is a
3 public agency wholly owned by the Swedish government,
4 and as such, Plaintiff was not entitled to default
5 against CSN as of the date default was requested,
6 September 20, 2015.

7 2. "Good cause" exists to set aside the default.

8 To determine whether "good cause" exists to set
9 aside an entry of default, a court must consider (1)
10 whether the party seeking to set aside the default
11 engaged in culpable conduct that led to the default, (2)
12 whether that party had a meritorious defense, and (3)
13 whether setting aside the default judgment would
14 prejudice the other party. Franchise Holding, 375 F.3d
15 at 925-926.

16 a. *Culpable Conduct*

17 In the present case, far from showing any culpable
18 conduct, CSN has been diligent in attempting to
19 communicate with Plaintiff regarding its responsive
20 pleading time-line. In fact, CSN informed Plaintiff
21 well in advance that CSN is a foreign agency within the
22 meaning of FSIA, and thus would have 60 days to file its
23 responsive pleading. Zipser Decl. ¶ 8. Plaintiff
24 nevertheless filed a request to enter default against
25 CSN with the clerk of court within the allotted 60 days.
26 Further, CSN's counsel has made repeated, rebuffed
27 attempts to secure Plaintiff's agreement to stipulate to

1 set aside the default, and in doing so has attempted to
2 make clear, multiple times, that CSN has an extended
3 deadline to file its response. Zipser Decl. ¶¶ 14-17.
4 As such, this factor weighs strongly in favor of finding
5 "good cause" to set aside the default.

6 b. *No Meritorious Defense*

7 There is no evidence that CSN lacks a meritorious
8 defense to Plaintiff's claims against him. As such,
9 this factor weighs in favor of "good cause" to grant
10 CSN's Motion to Set Aside Default.

11 c. *Prejudice of Reopening Judgment*

12 Finally, this Court finds that setting aside the
13 default judgment entered against CSN would not prejudice
14 Plaintiff because no default judgment has been entered.
15 See Signed Personal Check, 615 F.3d at 1091.

16 d. *Policy Favoring Adjudication on the Merits*

17 As discussed above, CSN has been diligent in
18 communicating with Plaintiff regarding its responsive
19 pleading deadline, and has repeatedly attempted to
20 stipulate to a resolution of the issue before filing the
21 present Motion to Set Aside Default. Additionally,
22 because default in this case was inappropriate when
23 entered, and Plaintiff appears to have knowingly misused
24 the remedy, denying CSN's Motion to Set Aside Default
25 would go directly against the strong policy favoring
26 adjudication on the merits. See id. As such, these
27 considerations further counsel the Court to grant

1 Defendant's Motion to Set Aside Default [63].

2 **III. CONCLUSION**

3 Based on the foregoing, this Court hereby **GRANTS**
4 Defendant's Motion to Set Aside Default [63]. Defendant
5 shall file a response to the operative complaint within
6 14 days from the date of this order.

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8 **IT IS SO ORDERED.**

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10 DATED: December 4, 2015 s/ RONALD S.W. LEW
11 **Honorable Ronald S.W. Lew**
12 Senior U.S. District Judge

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