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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

J & J SPORTS PRODUCTIONS, INC.,	)	Case No.: 1:14-cv-01578-KJM-BAM
Plaintiff,	)	FINDINGS AND RECOMMENDATIONS
v.	)	GRANTING DEFENDANT’S MOTION TO SET
MARTIN CARRILLO MARTINEZ a/k/a	)	ASIDE CLERK’S ENTRY OF DEFAULT
MARTIN MARTINEZ CARRILLO,	)	(Doc. 18)
Defendant.	)	ORDER DENYING PLAINTIFF'S MOTION FOR
	)	DEFAULT JUDGMENT AS MOOT
	)	(Doc. 14).

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**I. INTRODUCTION**

Pending before the Court is Defendant Martin Carrillo Martinez’s (“Defendant”) Motion to Set Aside the Clerk’s Entry of Default. (Doc. 18). Plaintiff J & J Sports Productions, Inc., (“Plaintiff”) filed an opposition to the Motion on July 9, 2015. (Doc. 20). The motions were referred to this Court pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. Having reviewed the parties’ filings, and for the reasons stated below, Defendants’ request to set aside the clerk’s entry of default should be GRANTED and Plaintiff’s Motion for Default Judgment should be DENIED as MOOT. (Docs. 14, 18).

1 **II. BACKGROUND**

2 Plaintiff J&J Sports Production, Inc., filed a complaint on October 8, 2014, alleging that  
3 Defendant unlawfully intercepted and exhibited the closed-circuit program “*Timothy Bradley v. Juan*  
4 *Manuel Marquez WBO Welterweight Championship Fight Program*” at his commercial establishment,  
5 La Nayarita Restaurant, located at 702 L Street, in Sanger, California. (Doc. 1). Defendant was  
6 personally served with the Summons and Complaint on February 3, 2015. (Doc. 9). Defendant did not  
7 answer the complaint, and the Clerk of the Court entered default against Defendant on February 25,  
8 2015. (Doc. 13).

9 On March 25, 2015, Plaintiff filed a motion for default judgment requesting that the Court  
10 enter a default judgment against Plaintiff for damages in the amount of \$26,600.00. (Doc. 14-5). On  
11 June 10, 2015, Mr. Gene E. Pico mailed a letter to the Court on behalf of Defendant stating that  
12 Defendant was unable to respond to the Complaint because his primary language is Spanish and he is  
13 unfamiliar with the legal system. (Doc. 17). Mr. Pico explained that Defendant no longer owns or  
14 operates La Nayarita, and therefore Defendant had no knowledge of the interception and broadcast of  
15 the fight. *Id.* According to Defendant, he signed legal documents transferring La Nayarita to Apolonia  
16 Neri on June 30, 2011.

17 The Court construed this document as an answer to the Complaint and a motion by Defendant,  
18 appearing *pro se*, to set aside the Clerk’s entry of default. (Doc. 18). Plaintiff filed an opposition to  
19 Defendant’s motion on July 9, 2015, arguing that Defendant did not satisfy the “good cause” standard  
20 necessary to set aside the default. (Doc. 20). Specifically, Plaintiff adds, Defendant’s failure to  
21 respond equates to culpability, Plaintiff would be prejudiced if the motion were granted, and  
22 Defendant’s meritorious argument fails. *Id.* Plaintiff’s motions are currently pending before the Court.

23 **III. LEGAL STANDARD**

24 The Federal Rules of Civil Procedure govern the entry of default. Once default has been  
25 entered by the clerk, “[t]he court may set aside an entry of default for good cause.” FED. R. CIV. P.  
26 55(c). In evaluating whether good cause exists, the court may consider “(1) whether the party seeking  
27 to set aside the default engaged in culpable conduct that led to the default; (2) whether it had no  
28 meritorious defense; or (3) whether reopening the default judgment would prejudice the other party.”

1 *United States v. Mesle*, 615 F.3d 1085, 1091 (9th Cir. 2010) (citing *Franchise Holding II, LLC v.*  
2 *Huntington Restaurants Group, Inc.*, 375 F.3d 922, 925-26 (9th Cir. 2004)); *see also TCI Group Life*  
3 *Ins. Plan v. Knoebber*, 244 F.3d 691, 696 (9th Cir. 2001). The standard for good cause “is disjunctive,  
4 such that a finding that any one of these factors is true is sufficient reason for the district court to  
5 refuse to set aside the default.” *Id.*

6 On the other hand, when the moving party seeks timely relief from default “and the movant has  
7 a meritorious defense, doubt, if any, should be resolved in favor of the motion to set aside the default  
8 so that cases may be decided on their merits.” *Mendoza v. Wight Vineyard Mgmt.*, 783 F.2d 941, 945-  
9 46 (9th Cir. 1986). Moreover, the Ninth Circuit has opined “judgment by default is a drastic step  
10 appropriate only in extreme circumstances; a case should, whenever possible, be decided on the  
11 merits.” *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

#### 12 IV. DISCUSSION

13 The Court will consider each of the good cause factors in turn below.

##### 14 A. Culpable Conduct

15 With respect to the first good cause factor, the Court concludes that Defendant has shown that  
16 he did not engage in culpable conduct. The Ninth Circuit has held that “a defendant’s conduct is  
17 culpable if he has received actual or constructive notice of the filing of the action and intentionally  
18 failed to answer.” *TCI Group Life Ins. Plan*, 244 F.3d at 697. The concept of “intentionally” in this  
19 context refers to conduct that is willful, deliberate, or that evidences bad faith. *Id.* “Neglectful failure  
20 to answer as to which the defendant offers a credible good faith explanation negating any intention to  
21 take advantage of the opposing party, interfere with judicial decision making, or otherwise manipulate  
22 the legal process is not ‘intentional’... and is therefore not necessarily—although it certainly may be,  
23 once the equitable factors are considered—culpable or inexcusable.” *Id.* at 697-98.

24 Defendant’s motion argues that his conduct was not culpable. Accompanied by an attached  
25 notarized agreement to transfer the business, Defendant explains that he transferred ownership of La  
26 Nayrita to Ms. Neri on June 30, 2011. According to Defendant, he had a good faith belief that Ms.  
27 Neri assumed ownership of the business, with all legal liabilities included. Based on that belief,  
28 Defendant was under the impression that Ms. Neri was handling this matter since she is the

1 responsible party. Defendant further submits that Ms. Neri is the party that Plaintiff should have sued,  
2 and he provides the business transfer document as support for his motion to set aside default.

3 In opposition, Plaintiff argues that “Defendant’s conduct is culpable if he has received actual  
4 or constructive notice of the filing of an action and intentionally failed to answer.” *TCI Group*, 244  
5 F.3d at 697. According to Plaintiff, Defendant fails to explain why he believed Ms. Neri was handling  
6 this matter. Plaintiff also argues that Defendant was served with the Complaint, Request for Entry of  
7 Default, and Motion for Default Judgment yet waited three months to file a response. While Plaintiff  
8 does not disagree that Defendant is genuinely unfamiliar with the legal system, Plaintiff further relies  
9 on *TCI Group*, 244 F.3d at 699, to argue that a lack of familiarity with the legal system is insufficient  
10 to rise to the level of excusable neglect.

11 Plaintiff’s argument, however, is unpersuasive. *TCI Group* explicitly avoided that holding. *Id.*  
12 at 699, n.6 (“We have not held, however, nor do we hold here, that legal sophistication or lack thereof  
13 is determinative of whether the culpability standard is met.”). On the contrary, courts “tend[] to  
14 consider the defaulting party’s general familiarity with legal processes . . . as pertinent to the  
15 determination whether the party’s conduct in failing to respond to legal process was deliberate, willful  
16 or in bad faith.” *Id.*

17 Defendant has put forth a credible, good faith explanation for his failure to answer. Further,  
18 nothing in Defendant’s answer indicates he acted in bad faith or attempted to take advantage of  
19 Plaintiff. Nor did Defendant attempt to interfere with or manipulate the judicial process. Defendant  
20 even apologized and displayed his willingness to cooperate fully going forward. Consequently, the  
21 Court finds that Defendant’s conduct does not meet the culpability standard.

## 22 **B. Meritorious Defense**

23 The Ninth Circuit has explained that the “meritorious defense” requirement “is not  
24 extraordinarily heavy.” *Mesle*, 615 F.3d at 1094. “All that is necessary to satisfy the ‘meritorious  
25 defense’ requirement is to allege sufficient facts that, if true, would constitute a defense.” *Id.* The  
26 truthfulness of the factual allegation “is not to be determined by the court when it decides the motion  
27 to set aside the default. Rather, that question ‘would be the subject of the later litigation.’” *Mesle*, 615  
28 F.3d at 1094 (quoting *TCI Group*, 244 F.3d at 700).

1 Defendant alleges that he is not the owner of La Nayarita, and Plaintiff has sued the wrong  
2 individual. Defendant contends that when he transferred La Nayarita to Ms. Neri in 2011, he was  
3 relieved of any legal obligations. Defendant also removed his name from the fictitious business name  
4 but did so only after being served with the Complaint.

5 Plaintiff responds that Defendant does not satisfy the meritorious defense factor because  
6 Defendant provided only conclusory statements and general denials. Further, Plaintiff argues, the  
7 liquor license identified Defendant as the owner and licensee of La Nayarita at the time of the fight,  
8 which cuts against Defendant's contention that he never had any business interest in La Nayarita.  
9 However, if Ms. Neri is the proper party that should be held liable for the actions that Plaintiff is  
10 alleging, that would indeed constitute a defense to Plaintiff's claims. Thus, Defendant has presented a  
11 legally cognizable defense, and the Court determines Defendant has satisfied his burden to show that  
12 he could mount a meritorious defense under the lenient standard set forth in *Mesle*.

### 13 **C. Prejudice to Plaintiff**

14 Finally, the Court must consider whether Plaintiff will suffer prejudice if the entry of default is  
15 set aside. *TCI Group*, 244 F.3d at 696. "To be prejudicial, the setting aside of a judgment must result  
16 in greater harm than simply delaying resolution of the case. Rather, 'the standard is whether  
17 [plaintiff's] ability to pursue his claim will be hindered.'" *Id.* at 701 (quoting *Falk*, 739 F.2d at 463).  
18 "[M]erely being forced to litigate on the merits cannot be considered prejudicial for purposes of lifting  
19 a default judgment." *Id.*

20 Plaintiff argues that prejudice exists because setting aside default will result in "tangible harm  
21 such as loss of evidence, increased difficulties of discovery, or greater opportunity for fraud or  
22 collection." Additionally, "there will certainly be increased difficulties with discovery as it will require  
23 Plaintiff to look beyond the most obvious source to obtain information relevant to the operations of the  
24 business." Plaintiff's argument is unpersuasive. Each of these alleged prejudices are the costs and  
25 burdens attendant to any litigation and do not provide a basis to deny Defendant's motion. Had there  
26 been no default, Plaintiff would have had to address these very concerns. An entry of default acts as a  
27 "windfall," and setting aside that default "merely restores the parties to an even footing in the  
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1 litigation.” *TCI Group*, 244 F.3d at 701. Accordingly, there is no prejudice to allowing the suit to  
2 proceed.

3 The Court finds that the above factors weigh in favor of setting aside the Clerk’s entry of  
4 default. There is a general presumption to try cases on their merits, and the instant case does not  
5 warrant a departure from this presumption. See *In re Hammer*, 940 F.2d 524, 525 (9th Cir. 1991).  
6 Accordingly, Defendant’s Motions to Set Aside Entry of Default should be **GRANTED**.

#### 7 **V. PLAINTIFF’S MOTION FOR DEFAULT JUDGMENT**

8 In a separate motion, J & J moves for the entry of default judgment against Defendant. (Doc.  
9 14). The “entry of default by the clerk is a prerequisite to an entry of default judgment.” *Vongrave v.*  
10 *Sprint PCS*, 312 F. Supp. 2d 1313, 1318 (S.D. Cal. 2004). Based on the Court’s recommendation to set  
11 aside the entry of default as to Defendant, the Court RECOMMENDS Plaintiff’s motion for default  
12 judgment be DENIED. (Doc. 14).

#### 13 **VI. CONCLUSION**

14 The Court finds that Defendant has demonstrated good cause and therefore RECOMMENDS  
15 as follows:

- 16 1. Defendant’s Motion to Set Aside Entry of Default should be GRANTED;
- 17 2. The Clerk shall set aside default as to Defendant Martin Carrillo Martinez, individually  
18 and dba La Nayarita Restaurant;
- 19 3. Plaintiff’s Motion for Default Judgment should be DENIED as MOOT;
- 20 4. The Clerk of Court shall serve this order on Defendant Martin Carrillo Martinez at  
21 14446 Lyle Street, Sylmar, California, 91342.

22 These Findings and Recommendations are submitted to the District Judge pursuant to the  
23 provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the Local Rules of Practice for the United  
24 States District Court, Eastern District of California. Within fifteen (15) days after being served with a  
25 copy of these Findings and Recommendations, any party may file written objections with the Court  
26 and serve a copy on all parties. Such a document should be captioned “Objections to Magistrate  
27 Judge’s Findings and Recommendations.” The district judge will review the Magistrate Judge’s  
28 findings and recommendations pursuant to 28 U.S.C. § 636 (b)(1)(c). The parties are advised that

1 failure to file objections within the specified time may waive the right to appeal the Order of the  
2 District Court. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

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IT IS SO ORDERED.

Dated: August 3, 2015

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE