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6 UNITED STATES DISTRICT COURT  
7 EASTERN DISTRICT OF CALIFORNIA  
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9 ELAINE K. VILLAREAL,

10 Plaintiff,

11 v.

12 COUNTY OF FRESNO and SHERIFF  
13 MARGARET MIMS,

14 Defendants.

Case No. 1:15-cv-01410-DAD-EPG (PC)

ORDER SETTING ASIDE DEFAULT  
AND GRANTING DEFENDANTS AN  
EXTENSION OF TIME TO FILE  
THEIR RESPONSIVE PLEADING

(ECF NOS. 105, 106, & 107)

15 Elaine Villareal (“Plaintiff”) is a prisoner proceeding *in forma pauperis* with this civil  
16 rights action filed pursuant to 42 U.S.C. § 1983.

17 Defendant County of Fresno’s responsive pleading was due no later than April 30,  
18 2018. (ECF No. 102). County of Fresno did not timely file its responsive pleading, and on  
19 May 4, 2018, Plaintiff filed a request for entry of default against defendant County of Fresno.  
20 (ECF No. 104). Default was entered. (ECF No. 106). On that same day, County of Fresno  
21 filed a request to set aside the entry of default, and Defendants filed a request for additional  
22 time to file their responsive pleading. (ECF Nos. 105 & 107).

23 Defendants argue that there is good cause to set aside the entry of default against  
24 County of Fresno because County of Fresno has been acting promptly and in good faith. Prior  
25 to the responsive pleading deadline, counsel for Defendants spoke with counsel for Plaintiff  
26 regarding the case, including the need for additional time to file the responsive pleading.  
27 Counsel for Defendants requested a thirty-day extension. Counsel for Plaintiff was agreeable  
28 to an extension, but thought a lesser extension was in order. Counsel for Plaintiff agreed to a

1 seven-day extension, although a formal request was never filed with the Court. Despite the  
2 agreement, Counsel for Plaintiff filed the request for entry of default. Counsel for Defendants  
3 attempted to get into contact with counsel for Plaintiff prior to filing the response to the request  
4 for entry of default, but was unable to. Accordingly, Defendants argue that there is good cause  
5 to set aside the entry of default.

6 Additionally, Defendants request that they be given until May 31, 2018, to file their  
7 responsive pleadings. Defendants argue that the extension is necessary because Defendants'  
8 counsel needs to confer with Plaintiff's counsel. Additionally, defendant Mims has been absent  
9 from Fresno, and this case may be assigned to new counsel.

10 Under Federal Rule of Civil Procedure 55(c), "the court may set aside an entry of  
11 default for good cause...." "To determine 'good cause', a court must 'consider[ ] three factors:  
12 (1) whether [the party seeking to set aside the default] engaged in culpable conduct that led to  
13 the default; (2) whether [it] had [no] meritorious defense; or (3) whether reopening the default  
14 judgment would prejudice' the other party." United States v. Signed Pers. Check No. 730 of  
15 Yubran S. Mesle, 615 F.3d 1085, 1091 (9th Cir. 2010) (alterations in original) (quoting  
16 Franchise Holding II, LLC. v. Huntington Restaurants Grp., Inc., 375 F.3d 922, 925-26 (9th  
17 Cir. 2004)). "This standard, which is the same as is used to determine whether a default  
18 judgment should be set aside under Rule 60(b), is disjunctive, such that a finding that any one  
19 of these factors is true is sufficient reason for the district court to refuse to set aside the  
20 default." (Id.).

21 "[D]efault judgments are generally disfavored; whenever it is reasonably possible, cases  
22 should be decided on their merits." Schwab v. Bullock's Inc., 508 F.2d 353, 355 (9th Cir.  
23 1974). See also Falk v. Allen, 739 F.2d 461, 463 (9th Cir. 1984) ("[J]udgment by default is a  
24 drastic step appropriate only in extreme circumstances; a case should, whenever possible, be  
25 decided on the merits.").

26 It does not appear that County of Fresno engaged in culpable conduct, it does not appear  
27 that County of Fresno lacks a meritorious defense, and there does not appear to be any  
28 prejudice to Plaintiff if the entry of default is set aside. In fact, it appears that Plaintiff knew

1 that County of Fresno was going to defend this suit, and that County of Fresno was seeking an  
2 extension of time to file its responsive pleading. Based on this, and the strong public policy in  
3 favor of deciding cases on the merits, the Court finds good cause to set aside the entry of  
4 default.

5 The Court also finds good cause to grant Defendants an extension of time to file their  
6 responsive pleading.

7 Accordingly, based on the foregoing, IT IS HEREBY ORDERED THAT:

- 8 1. The entry of default against County of Fresno (ECF No. 106) is set aside; and
- 9 2. Defendants have until May 31, 2018, to file their responsive pleading.

10 IT IS SO ORDERED.

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12 Dated: May 7, 2018

13 /s/ Eric P. Gray  
14 UNITED STATES MAGISTRATE JUDGE