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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE EASTERN DISTRICT OF CALIFORNIA
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10 NATIONAL CONTINENTAL INSURANCE
COMPANY,

11 Plaintiff,

12 v.

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14 YOUNG'S CARGO, INC., *et al.*,

15 Defendants.
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Case No. 1:17-cv-01016-LJO-EPG

FINDINGS AND RECOMMENDATIONS
RECOMMENDING THAT DEFENDANTS'
MOTIONS TO SET ASIDE DEFAULT BE
GRANTED AND THAT PLAINTIFF'S
MOTION FOR DEFAULT JUDGMENT BE
DENIED AS MOOT

(ECF Nos. 12, 15, 16)

OBJECTIONS, IF ANY, DUE IN 14 DAYS

17 **I. INTROUDCTION**

18 Pending before the Court are Defendants Kulwant Singh's and Young's Cargo, Inc.'s
19 ("Defendants") motions to set aside entry of default (ECF Nos. 15-16) and Plaintiff National
20 Continental Insurance Company's ("Plaintiff") motion for default judgment (ECF No. 12). Plaintiff
21 filed an opposition to the motions to set aside default on March 23, 2018. (ECF No. 18.) The motions
22 were referred to this Court pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. Having
23 reviewed the parties' filings, and for the reasons stated below, this Court recommends that
24 Defendants' requests to set aside entry of default be GRANTED and Plaintiff's motion for default
25 judgment be DENIED as MOOT.
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1 **II. BACKGROUND**

2 Plaintiff filed the three-count complaint initiating this action on July 31, 2017, requesting
3 declaratory relief related to a November 30, 2015 automobile accident in Sefuniak Springs, Walton
4 County, Florida. (ECF No. 1 at 2 ¶ 7.) On December 16, 2016, Midsouth Paving, Inc. filed a lawsuit
5 in the Circuit Court of the First Judicial District of Walton County, Florida against Defendants
6 Young’s Cargo and Vermilya arising out of the November 30, 2015 traffic collision (“Midsouth
7 lawsuit”). Plaintiff issued an insurance policy number to Kulwant Singh d/b/a Youngs Freightway
8 with a limit of liability of \$750,000. Plaintiff is informed and believes that Young’s Cargo and
9 Vermilya contend that they are insureds under the policy and tendered their defense of the Midsouth
10 lawsuit to National Continental. The Midsouth lawsuit and the claimants collectively demand from
11 Young’s Cargo and Vermilya an amount in excess of \$75,000. Plaintiff requests declaratory relief
12 that: 1) Plaintiff has no duty to defend; 2) Plaintiff has no duty to indemnify; and 3) the policy is void.

13 Defendants were personally served with the Summons and Complaint on August 16, 2017.
14 (ECF Nos. 5-6.) Defendants did not answer the complaint, and the Clerk of the Court entered default
15 against Defendants on November 1, 2017. (ECF No. 10.)

16 On January 8, 2018, Plaintiff filed a motion for default judgment requesting that the Court
17 enter a default judgment against Defendants for the requested declaratory relief. (ECF No. 12.) On
18 February 16, 2018, Defendants filed motions to set aside entry of default. (ECF Nos. 15-16.) Plaintiff
19 filed an opposition to Defendants’ motions on March 23, 2018, arguing that Young’s Cargo is a
20 suspended corporation precluded from defending itself and that Defendants did not satisfy the “good
21 cause” standard necessary to set aside the default. (ECF No. 18.)

22 **III. LEGAL STANDARD**

23 The Federal Rules of Civil Procedure govern the entry of default. Once default has been
24 entered by the clerk, “[t]he court may set aside an entry of default for good cause.” FED. R. CIV. P.
25 55(c). In evaluating whether good cause exists, the court may consider “(1) whether the party seeking
26 to set aside the default engaged in culpable conduct that led to the default; (2) whether it had no
27 meritorious defense; or (3) whether reopening the default judgment would prejudice the other party.”
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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 Ninth Circuit has held that “a defendant’s
16 conduct is culpable if he has received actual or constructive notice of the filing of the action and
17 intentionally failed to answer.” *TCI Group Life Ins. Plan*, 244 F.3d at 697. The concept of
18 “intentionally” in this context refers to conduct that is willful, deliberate, or in bad faith. *Id.*
19 “Neglectful failure to answer as to which the defendant offers a credible good faith explanation
20 negating any intention to take advantage of the opposing party, interfere with judicial decision making,
21 or otherwise manipulate the legal process is not ‘intentional’... and is therefore not necessarily—
22 although it certainly may be, once the equitable factors are considered—culpable or inexcusable.” *Id.*
23 at 697-98.

24 Defendants provide sworn declarations explaining that their failure to respond to the complaint
25 in this case is a result of a mistake of fact that they had already retained counsel for all proceedings
26 arising from the Florida accident and were not aware that this lawsuit was separate or distinct from the
27 other proceedings in which they were involved. (ECF No. 16-1 at 4.) Defendants further state that
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1 they do not recall being served in this case and did not understand that there were any other cases
2 arising from the Florida accident other than the case in Florida state court.

3 In its opposition to vacating entry of default, Plaintiff argues that Defendants' failure to
4 respond was a result of their culpable conduct because they have not adequately rebutted the
5 presumption that they received the summons, complaint, and the application for default judgment.

6 The Court finds that Defendants have put forth a credible, good faith explanation for their
7 failure to answer. Defendants have now appeared and adequately displayed their willingness to
8 cooperate fully going forward. Consequently, the Court finds that Defendants' conduct does not meet
9 the culpability standard for a default judgment.

10 **B. Meritorious Defense**

11 The Ninth Circuit has explained that the "meritorious defense" requirement "is not
12 extraordinarily heavy." *Mesle*, 615 F.3d at 1094. "All that is necessary to satisfy the 'meritorious
13 defense' requirement is to allege sufficient facts that, if true, would constitute a defense." *Id.* The
14 truthfulness of the factual allegation "is not to be determined by the court when it decides the motion
15 to set aside the default. Rather, that question 'would be the subject of the later litigation.'" *Mesle*, 615
16 F.3d at 1094 (quoting *TCI Group*, 244 F.3d at 700).

17 Defendant Singh explains that she had an insurable interest in the truck-tractor by nature of her
18 lease of the truck-tractor from Young's Cargo, Inc. Potentially, Defendant Singh may be found to
19 have an equitable interest in Young's Cargo, Inc. and its property under an alter-ego theory of liability.
20 Defendant Singh states that this equitable interest would constitute an insurable interest, which could
21 be sufficient to defeat Plaintiff's request for declaratory relief.

22 Plaintiff responds that this argument only addresses the third cause of action, and at the very
23 least, default judgment should be entered as to the first and second causes of action. However,
24 Defendants disagree, stating that their argument will "act as a complete defense to Plaintiff's case."
25 (ECF No. 20 at 2.)

26 It appears to the Court that Defendants have presented a legally cognizable defense. Therefore,
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1 Defendants have satisfied their burden to show that a meritorious defense could be mounted under the
2 lenient standard set forth in *Mesle*.

3 **C. Prejudice to Plaintiff**

4 Finally, the Court must consider whether Plaintiff will suffer prejudice if the entry of default is
5 set aside. *TCI Group*, 244 F.3d at 696. Plaintiff argues that prejudice exists because it incurred
6 attorney fees and costs to seek a default judgment and to continue defending Singh against underlying
7 claims. Plaintiff states that it will be prejudiced by the delay and the setting the default aside.

8 “To be prejudicial, the setting aside of a judgment must result in greater harm than simply
9 delaying resolution of the case. Rather, ‘the standard is whether [plaintiff’s] ability to pursue his claim
10 will be hindered.’” *Id.* at 701 (quoting *Falk*, 739 F.2d at 463). “[M]erely being forced to litigate on the
11 merits cannot be considered prejudicial for purposes of lifting a default judgment.” *Id.*

12 Applying this legal standard, Plaintiff has not adequately demonstrated prejudice as to
13 allowing the suit to proceed.

14 **V. YOUNG CARGO’S CORPORATE STATUS**

15 In response to Defendants’ motion to set aside default, Plaintiff argues that Young’s Cargo is a
16 suspended corporation and therefore may not participate in this litigation. (ECF No. 18 at 4-5, citing
17 California Corporations Code § 2205; *Palm Valley Homeowners Ass’n*, 85 Cal. App. 4th 553, 560
18 (2000); *In re Roussos*, 2017 U.S. Dist. LEXIS 60538, *19 (CD Cal. 2017)). Young’s Cargo filed a
19 reply on March 30, 2018 acknowledging that it is a suspended corporation, but indicating that it was
20 “now seeking to be revived with the California Secretary of State which should be corrected in a
21 manner of weeks.” (ECF No. 20 at 1-2.) On April 23, 2018, Young’s Cargo filed a “notice of revivor”
22 stating that its “corporate status has been revived and Young’s Cargo, Inc. is now an active California
23 Corporation.” (ECF No. 21.)

24 Because Young’s Cargo’s corporate status has now been revived, the Court does not consider
25 this issue to be a barrier to vacating entry of default in this case.

26 The Court finds that the above factors weigh in favor of setting aside entry of default. There is
27 a general presumption to try cases on their merits, and the instant case does not warrant a departure
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1 from this presumption. *See In re Hammer*, 940 F.2d 524, 525 (9th Cir. 1991). Thus, the Court finds
2 good cause to vacate entry of default. Accordingly, the Court will RECOMMEND that Defendants’
3 motions to set aside entry of default (ECF Nos. 15-16) be GRANTED.

4 **VI. GOOD CAUSE TO VACATE ENTRY OF DEFAULT - SANCTIONS**

5 Plaintiff requests payment of \$5,260 for sanctions in the form of attorney fees and costs in
6 preparing and filing the application for entry of default and the application for default judgment. (ECF
7 No. 18 at 8.) Defendants argue that sanctions are not appropriate because “Plaintiff should have been
8 aware that Defendants were represented by counsel, by nature of the fact that Defendant Kulwant
9 Singh made a request through the undersigned counsel for Plaintiff to defend Kulwant Singh in an
10 underlying personal injury lawsuit.” (ECF No. 20 at 3.) However, Plaintiff never warned or notified
11 defense counsel about the pendency of this case.

12 In these circumstances, the Court does not find the imposition of sanctions justifiable.

13 **VII. PLAINTIFF’S MOTION FOR DEFAULT JUDGMENT**

14 In a separate motion, Plaintiff moves for the entry of default judgment against Defendants.
15 (ECF No. 12.) The “entry of default by the clerk is a prerequisite to an entry of default judgment.”
16 *Vongrave v. Sprint PCS*, 312 F. Supp. 2d 1313, 1318 (S.D. Cal. 2004). Based on the Court’s
17 recommendation to set aside the entry of default as to Defendants, the Court RECOMMENDS
18 Plaintiff’s motion for default judgment be DENIED as MOOT. (ECF No. 12.)

19 **VIII. CONCLUSION**

20 Based on the forgoing, the Court hereby RECOMMENDS as follows:

- 21 1. Defendants’ motion to set aside entry of default (ECF Nos. 15-16) be GRANTED;
- 22 3. Plaintiff’s motion for default judgment be DENIED as MOOT;

23 These Findings and Recommendations are submitted to the District Judge pursuant to the
24 provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the Local Rules of Practice for the United
25 States District Court, Eastern District of California. Within fifteen (15) days after being served with a
26 copy of these Findings and Recommendations, any party may file written objections with the Court
27 and serve a copy on all parties. Such a document should be captioned “Objections to Magistrate
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1 Judge's Findings and Recommendations." The district judge will review the Magistrate Judge's
2 findings and recommendations pursuant to 28 U.S.C. § 636 (b)(1)(c). The parties are advised that
3 failure to file objections within the specified time may waive the right to appeal the Order of the
4 District Court. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).
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7 IT IS SO ORDERED.

8 Dated: **April 30, 2018**

9 /s/ Eric P. Grogan
10 UNITED STATES MAGISTRATE JUDGE
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