

1 “This standard, which is the same as is used to determine whether a default judgment should be
2 set aside under Rule 60(b), is disjunctive, such that a finding that any one of these factors is true
3 is sufficient reason for the district court to refuse to set aside the default.” Id.

4 “[D]efault judgments are generally disfavored; whenever it is reasonably possible, cases
5 should be decided on their merits.” Schwab v. Bullock’s Inc., 508 F.2d 353, 355 (9th Cir. 1974);
6 see also Falk v. Allen, 739 F.2d 461, 463 (9th Cir. 1984) (“[J]udgment by default is a drastic step
7 appropriate only in extreme circumstances; a case should, whenever possible, be decided on the
8 merits.”).

9 II.

10 DISCUSSION

11 Defendant argues that he “through County Counsel has acted promptly and in good faith
12 in immediately learning about and responding to the Court’s recent order regarding a lack of
13 response [ECF 23], and in investigating and explaining the circumstances and what we believe is
14 excusable non-culpable mistake and inadvertence that resulted in the same.” (ECF No. 25 at 5.)
15 More specifically, Defendant declares as follows:

16 I am a Senior Correctional Officer with the Fresno County Sheriff-Coroner’s Office
17 (“FSO”). I have been employed as Correctional Officer, working at the Fresno County
18 Jail, since March 2015.

19 In October of this year I was advised there was an envelope for me to pick up from the
20 Sheriff’s Office. After opening the envelope and looking at the papers, I believed that I
21 should sign and return the document known as waiver of summons. I signed the form
22 and personally emailed it back to James Joffers at the United states Marshals office.

23 The papers consisted of the envelope containing a copy of the “Complaint,” and copies
24 of the Waiver of Service of Summons (hereafter “Waiver”), with instructions from the
25 U.S. Marshal on how to respond to the Waiver.

26 Shortly after that email, I contacted the Marshal’s Office and confirmed they received
27 my waiver form.

28 It was my incorrect understanding and belief at that time that all I needed to do in
response to the Complaint was sign the Waiver and forward it to James Joffer. I took no
further action from that point on in response to the waiver or other papers, including to
notify anyone else in my command, because, at that time, I did not know that any further
action was required of me. After speaking with Fresno County Counsel today, December

1 23, 2024, I have learned that in any future situation of this nature, I need to promptly
2 notify my supervisor of the Complaint or papers, as well as the Jail's Legal Liaison Sgt.,
3 who will thereafter refer me to contact County Risk Management and/or Fresno County
4 Counsel's Office, and that I should then follow-up with these offices as well as my
5 command and Legal Liaison Sgt. to obtain further updates.

6 I did not act in bad faith or with any intent to cause a problem for anyone or this Court in
7 failing to respond to the lawsuit on time. After sending in my waiver form in October, I
8 did not receive any further direction, contact, or any other documents or notices from
9 anyone or this Court other than the initial envelope containing the papers and waiver,
10 until today, when I received a call from the County attorney asking about this.

11 (ECF No. 25, Declaration of Ricardo Necochea ¶¶ 3-8.) Thus, Defendant submits that he acted in
12 good-faith, his mistake was inadvertent and based on a lack of familiarity and understanding of
13 the legal process, and he believes he has meritorious defenses to the alleged claims. (ECF No. 25
14 at 6.) In addition, there is minimal prejudice to Plaintiff at this stage of the proceedings. (*Id.*)

15 In consideration of the relevant factors, the Court finds that Defendant's motion to set
16 aside the entry of default should be granted. Defendant credibility explains that he was
17 unfamiliar with the legal process which mistakenly lead him to not take timely action in response
18 service of process by the United States Marshals. *See, e.g., TCI Group Life Ins. Plan v.*
19 *Knoebber*, 244 F.3d 691, 697 (9th Cir. 2001) ("Neglectful failure to answer as to which the
20 defendant offers a credible, good faith explanation negating any intention to take advantage of the
21 opposing party, interfere with judicial decisionmaking, or otherwise manipulate the legal process
22 is not 'intentional' under our default cases....") (*overruled on other grounds by Egelhoff v.*
23 *Egelhoff ex rel. Breiner*, 532 U.S. 141, 147-50 (2001)). Defendant believed he had done all that
24 was required of him when he returned the signed waiver of service, and it was not until he
25 received a call from the County attorney that he had failed to timely respond to the complaint.
26 Accordingly, Defendant's initial failure to respond to the operative complaint does not appear to
27 have been willful, deliberate, or in bad faith. In addition, Defendant declares that he believes he
28 has meritorious defenses to Plaintiff's claims of retaliation. (ECF No. 25 at 6.) Lastly, at this
early stage of the proceedings and based on a review of the record, setting aside the default will
not hinder Plaintiff's ability to pursue his claim, and any minimal delay has not impacted the

1 evidence or impacted any potential discovery in this case. See, e.g., TCI Group, 244 F.3d at 701
2 (“To be prejudicial, the setting aside of a judgment must result in greater harm than simply
3 delaying resolution of the case” or “being forced to litigate on the merits.”). In sum, the Court
4 finds that the three relevant factors weigh in favor setting aside the entry of default as to
5 Defendant Necochea.¹

6 **III.**
7 **RECOMMENDATIONS**


8 Based on the foregoing, it is HEREBY RECOMMENDED that:

- 9 1. Defendant’s motion to set aside the entry of default, (ECF No. 25), be GRANTED;
10 and
11 2. Defendant be given thirty days to file an answer to the operative complaint.

12 These Findings and Recommendations will be submitted to the United States District
13 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **fourteen**
14 **(14) days** after being served with these Findings and Recommendations, the parties may file
15 written objections with the Court, limited to 15 pages in length, including exhibits. The
16 document should be captioned “Objections to Magistrate Judge’s Findings and
17 Recommendations.” The parties are advised that failure to file objections within the specified
18 time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39
19 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

20
21 IT IS SO ORDERED.

22 Dated: January 27, 2025


23 **STANLEY A. BOONE**
24 United States Magistrate Judge

25
26
27 ¹ Defendant also seeks a thirty-day extension complete the process by the County of preparing his defense, and to file
28 a response to Plaintiff’s operative complaint. On the basis of good cause, the Court will grant that Defendant’s
request be granted.