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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

United States of America,	)	
	)	2:09-cv-1940-GEB-GGH
Plaintiff,	)	
	)	
v.	)	<u>ORDER DENYING MOTION TO SET</u>
	)	<u>ASIDE ENTRY OF DEFAULT*</u>
Real Property located at 1 Mile	)	
Up Hennessey Road, Burnt Ranch,	)	
California, APN: 008-430-02,	)	
James E. Pickle, Terry J.	)	
Williams, and Thomas A. Pickle,	)	
	)	
Defendants.	)	

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Erlinda Pickle (Mrs. Pickle), in her capacity as appointed Probate Conservator of Thomas A. Pickle (Mr. Pickle), moves to set aside the Clerk's entry of default against Mr. Pickle. Mrs. Pickle argues that the recent Ninth Circuit decision in United States v. Signed Personal Check No. 730 of Yurban S. Mesle ("Mesle"), 615 F.3d 1085 (9th Cir. 2010), warrants a finding that "good cause" exists for vacating the entry of default against Mr. Pickle. The government opposes the motion, arguing that notwithstanding the Mesle decision, Mrs. Pickle has not shown the existence of "good cause" justifying issuance of an order vacating the Clerk's entry of default.

**I. LEGAL STANDARD**

Federal Rule of Civil Procedure 55(c) prescribes: "The court

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\* This matter is deemed suitable for decision without oral argument. E.D. Cal. R. 230(g).

1 may set aside an entry of default for good cause . . . .” Three factors  
2 are considered when determining whether good cause exists justifying  
3 issuance of an order vacating the Clerk’s entry of default: (1) whether  
4 the party seeking to set aside the entry of default engaged in culpable  
5 conduct that led to the default; (2) whether the party seeking to set  
6 aside the entry of default had no meritorious defense; or (3) whether  
7 reopening the entry of default would prejudice the other party. Mesle,  
8 615 F.3d at 1091. “The standard . . . is disjunctive, such that a  
9 finding that any one of these factors is true is sufficient reason for  
10 the district court to refuse to set aside the [entry of] default.”  
11 Mesle, 615 F.3d at 1091 (citing Franchise Holding II, LLC v. Huntington  
12 Rests. Grp., Inc., 375 F.3d 922, 926 (9th Cir. 2004)). “[T]he party  
13 seeking to [set aside the entry of default] bears the burden of  
14 demonstrating that these factors favor [setting aside the entry of  
15 default].” TCI Group Life Ins. Plan v. Knoebber, 244 F.3d 691, 696 (9th  
16 Cir. 2001).

## 17 **II. BACKGROUND**

18 This is an *in rem* action brought by the United States against  
19 Real Property located at 1 Mile Up Hennessey Road, Burnt Ranch, CA.  
20 (Compl. ¶ 3.) The government alleges in its Complaint that “[t]he  
21 United States seeks to forfeit the defendant real property, including  
22 any right, title and interest in the whole of any lot or tract of land  
23 and any appurtenances or improvement thereon, on the grounds that said  
24 real property was used or intended to be used, in any manner or part, to  
25 commit, or to facilitate the commission of a violation of 21 U.S.C. §  
26 841 *et seq.*, . . . and is therefore subject to forfeiture to the United  
27 States pursuant to 21 U.S.C. § 881(a)(7).” Id. ¶ 4.

28 Mr. Pickle, who is the recorded owner of the defendant real

1 property, was personally served with the forfeiture complaint on July  
2 30, 2009. (Notice of Process Receipt and Return, ECF No. 8.) Mr.  
3 Pickle disappeared sometime after being personally served and his  
4 whereabouts are unknown. (Mot. 3:17-18.)

5 Mr. Pickle's attorney, on Mr. Pickle's behalf, responded to  
6 the government's complaint by filing a claim of interest in the property  
7 and an answer to the government's complaint. (ECF Nos. 9, 14.) Mr.  
8 Pickle's attorney also verified the claim and answer on behalf of Mr.  
9 Pickle. Id. The government filed a motion to strike the claim and  
10 answer of Thomas A. Pickle on the ground that Mr. Pickle failed to  
11 personally verify his claim and answer, which was granted on February 3,  
12 2010. (ECF No. 21.) On March 2, 2010, the Clerk entered default  
13 against Mr. Pickle in this action. (ECF No. 23.)

14 On February 25, 2010, the Superior Court of California, County  
15 of Trinity ("Superior Court") appointed Mrs. Pickle as Probate  
16 Conservator for Mr. Pickle. (Mot. Ex. A.) Further, on July 12, 2010,  
17 Mrs. Pickle received authorization from the Superior Court to proceed  
18 with acting on Mr. Pickle's behalf in this case in her capacity as  
19 Probate Conservator. (Mot. Ex. C.) On July 20, 2010, Mrs. Pickle filed  
20 a claim and answer on behalf of Mr. Pickle. (See Claim in Civil  
21 Forfeiture Case, ECF No. 31; Ans. to Compl., ECF No. 32.)

### 22 **III. DISCUSSION**

#### 23 **1. Meritorious Defenses**

24 Mrs. Pickle argues that Mr. Pickle has two meritorious  
25 defenses against the present forfeiture action that justify setting  
26 aside the Clerk's entry of default: first, that probable cause did not  
27 exist for the search of the defendant property and therefore the search  
28 violated of the Fourth Amendment; and second, that requiring forfeiture

1 of the entire property constitutes an excessive fine proscribed by the  
2 Eighth Amendment. The government responds that Mrs. Pickle failed to  
3 present specific facts demonstrating a defense in this case.

4 "A defendant seeking to vacate [entry of] default . . . must  
5 present specific facts that would constitute a defense." TCI Group, 244  
6 F.3d at 700. "[C]onclusory statements that a dispute exist[s]" or "mere  
7 general denials without facts to support [the defense are] not enough to  
8 justify vacating a default or default judgment." Franchise Holdings II,  
9 375 F.3d at 926 (quotation omitted); see also Gomes v. Williams, 420  
10 F.2d 1364, 1366 (10th Cir. 1970) (stating "[i]n an attempt to determine  
11 the meritorious nature of a defense, the trial court must have before it  
12 more than mere allegations that a defense exists").

13 **A. Lack of Probable Cause in Violation of the Fourth Amendment**

14 Mrs. Pickle supports the Fourth Amendment defense with the  
15 following allegations:

16 [A]s will be developed at the evidentiary  
17 hearing on claimants anticipated motion to suppress  
18 evidence, claimants will establish probable cause  
19 did not exist within the four corners of the  
20 affidavit for the search of the residence. Thus,  
the 18 pounds of marijuana, packaging materials,  
multiple weapons, and currency found in claimant's  
residence will be suppressed, and cannot be used in  
these forfeiture proceedings.

21 These conclusory allegations are insufficient to support this  
22 defense; therefore, this purported defense does not support granting the  
23 motion to set aside the entry of default.

24 **B. Excessive Fine in Violation of the Eighth Amendment**

25 Mrs. Pickle supports the Eighth Amendment defense with the  
26 following allegations:

27 First, the value of the house at the time of  
28 its seizure was several hundred thousand dollars.  
Second, it is the family residence. Third, not  
having the family home to live in is a substantial

1 hardship on Mr. Pickle should he reappear.

2 Should the Court grant the motion to suppress  
3 evidence, there will be no evidence of culpability  
4 on the part of Mr. Pickle in the activities alleged  
5 in the complaint for forfeiture and forfeiture of  
6 the entire residence would be excessive.

7 The portion of this defense which relies on conclusory  
8 allegations about the legality of the search is insufficient to justify  
9 granting the motion. Nor has Mrs. Pickle's remaining conclusory  
10 allegations shown that a meritorious Eighth Amendment defense exists  
11 since the property is subject to forfeiture under Title 21 U.S.C. §  
12 881(a)(7), which prescribes: "The following shall be subject to  
13 forfeiture to the United States and no property right shall exist in  
14 them . . . [a]ll real property . . . used . . . to commit, or facilitate  
15 the commission of, a violation of [21 U.S.C. § 841 et seq.]"  
16 Therefore, this defense does not support granting the motion to set  
17 aside the entry of default.

## 18 **2. Prejudice**

19 Mrs. Pickle also makes a conclusory, one paragraph argument  
20 that the government would not suffer prejudice if the entry of default  
21 against Mr. Pickle was set aside. The government counters that Mr.  
22 Pickle's disappearance will result in prejudicial loss of evidence and  
23 increased difficulties in discovery.

24 "To be prejudicial, the setting aside of a[n entry of] default  
25 must result in greater harm than simply delaying resolution of the  
26 case." TCI Group, 244 F.3d at 701. "[T]he standard is whether the  
27 plaintiff's ability to pursue his claim will be hindered." Id. (quoting  
28 Falk, 739 F.2d at 463). "[T]he delay must result in tangible harm such  
as loss of evidence, increased difficulties of discovery, or greater  
opportunity for fraud or collusion." Id. (citation omitted).

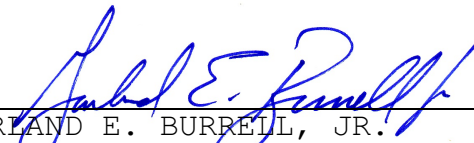
The government is no longer able to pursue its claim against

1 Mr. Pickle due to his disappearance. Further, Mrs. Pickle's conclusory  
2 assertion that setting aside the entry of default would do nothing more  
3 than delay resolution of the case is insufficient to justify granting  
4 her motion. Therefore, the prejudice to the government supports denying  
5 the motion to set aside the entry of default.

6 **IV. CONCLUSION**

7 For the stated reasons, the motion to set aside the clerk's  
8 entry of default against Mr. Pickle is denied.

9 Dated: September 21, 2011

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GARLAND E. BURRELL, JR.  
United States District Judge