

1 therefore did not produce any evidence showing that a genuine
2 dispute of material fact existed. Similarly, the Court granted
3 Plaintiff's motion for fees based on evidence submitted by
4 Plaintiff and his accompanying legal arguments. This motion was
5 also unopposed.

6 Defendant's motion is not properly before the Court.
7 Defendant seeks relief from a default judgment, but no default
8 judgment was entered in this case. Plaintiff moved for summary
9 judgment on the merits, and the Court issued a reasoned decision
10 on the merits of this case and the sufficiency of Plaintiff's
11 evidence, determining that Plaintiff was entitled to judgment.
12 The same is true of Plaintiff's motion for attorneys' fees - that
13 motion was granted on the merits of Plaintiff's motion, not
14 through default. While the Local Rules permit a party to seek
15 reconsideration of a motion, reconsideration in that context
16 requires a party to show what new facts or circumstances support
17 a different result and why those new facts or circumstances were
18 not presented at the time of the prior motion. E.D. Cal. R.
19 230(j). The record currently before the Court does not satisfy
20 that standard.

21 Even if the Court's entry of judgment against Defendant
22 somehow constitutes a default judgment, his motion still fails.
23 Defendant's motion is brought pursuant to California Code of
24 Civil Procedure ("CCP") § 473(b). The Federal Rules of Civil
25 Procedure, however, govern procedure in federal courts. Fed. R.
26 Civ. P. 1. Federal Rules of Civil Procedure 55(c) and 60(b)
27 apply to motions seeking relief from a default judgment. Under
28 both rules, courts examine three factors to determine if a party

1 is entitled to relief from a default judgment: "(1) whether the
2 party seeking to set aside the default engaged in culpable
3 conduct that led to the default; (2) whether it had no
4 meritorious defense; or (3) whether reopening the default
5 judgment would prejudice the other party." United States v.
6 Signed Pers. Check No. 730 of Yubran S. Mesle, 615 F.3d 1085,
7 1091 (9th Cir. 2010) (quotation and internal alterations
8 omitted). If any one of the factors is present, relief may be
9 denied, but default judgments are an extreme result, disfavored
10 where a case can be decided on the merits. Id. The party
11 seeking relief from a judgment bears the burden of showing that
12 the factors favor vacating a judgment. TCI Group Life Ins. Plan
13 v. Knoebber, 244 F.3d 691, 696 (9th Cir. 2001).

14 In support of his motion seeking relief from the Court's
15 grant of summary judgment in Plaintiff's favor, Defendant relies
16 on two arguments. Defendant argues that he was in India because
17 his parents were ill and he never received notice of Plaintiff's
18 motion for summary judgment. Defendant's declaration concerning
19 his time in India is devoid of any meaningful details such as
20 when he was in India, for how long, or why he was unable to
21 follow the course of the present litigation while he was out of
22 the country. The record before the Court is simply not
23 sufficient to determine whether the entry of judgment resulted
24 from Defendant's own conduct, and Defendant has therefore not met
25 his burden with respect to this factor.

26 Defendant also argues that he never received notice of
27 Plaintiff's motion for fees, but the record does not support that
28 finding. When Defendant's counsel associated with this case on

1 February 25, 2013, he gained access to the Court's electronic
2 filing system and therefore had notice of the pending fees
3 motion. Even a cursory review of the procedural posture of the
4 case would have revealed that the pending fees motion was
5 continued specifically to ensure that Defendant received proper
6 notice and had time to obtain counsel (Doc. #52). The opposition
7 to Plaintiff's motion was not due until April 3, 2013. Defendant
8 does not explain why the month between his counsel's association
9 and the deadline for the opposition was not sufficient.
10 Defendant's motion fails because his counsel's culpable conduct
11 caused Plaintiff's unopposed motion for attorneys' fees to be
12 granted.

13 Defendant also points out that his first attorney passed
14 away about a month after the opposition to Plaintiff's summary
15 judgment motion was due. While an attorney's unexpected death
16 may justify reconsideration of a motion, Defendant fails to
17 indicate what meritorious defense, if any, he would offer in
18 opposition to Plaintiff's motion for summary judgment if the
19 Court were to reconsider it. TCI Group, 244 F.3d at 696. ("If,
20 however, the defendant presents no meritorious defense, then
21 nothing but pointless delay can result from reopening the
22 judgment.")

23 The third factor - prejudice to the nonmoving party - is not
24 readily apparent in this case. Prejudice in this context must
25 limit Plaintiff's ability to pursue the case, not merely delay
26 resolution. Id. at 701. Plaintiff only argues that he would be
27 prejudiced by being forced to relitigate his motions, not that he
28 would be unable to do so. Nevertheless, the arguable lack of

1 prejudice is not a legally sufficient reason to grant Defendant's
2 motion herein.

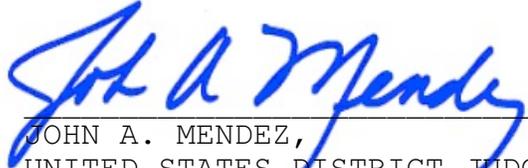
3 Defendant fails to show that he is entitled to relief from
4 the grant of summary judgment and the award of attorneys' fees in
5 this case. For this reason, his motion is denied.

6 2. Monetary Sanctions

7 In the Court's April 15, 2013 minute order (Doc. #56),
8 Defendant's counsel Robert McCann was ordered to show cause for
9 failing to oppose Plaintiff's motion for fees as required by
10 Local Rule 230(c) or pay sanctions in the amount of \$150 within
11 ten days. Mr. McCann did not respond directly to the Court's
12 minute order, and insofar as the motion to set aside constitutes
13 a response it is insufficient for the reasons discussed in the
14 preceding section. The motion was also filed past the Court's 10
15 day deadline. The Court accordingly finds that Mr. McCann has
16 not shown good cause for failing to oppose Plaintiff's fees
17 motion, and he is therefore ordered to pay monetary sanctions in
18 the amount of \$150.00 to the Clerk of Court within ten (10) days.

19 IT IS SO ORDERED.

20 Dated: July 3, 2013



JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE

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