

United States District Court For the Northern District of California

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granting Defendant's Motion to Set Aside Default, subject to certain conditions. Defendant did not 1 2 file a reply in support of his motion.

Federal Rule of Civil Procedure 55(c) states, in relevant part: "The court may set aside an entry of default for good cause. . . ." The discretion of the court in setting aside an order of default is especially broad, where, as here, a party seeks to set aside the entry of an order of default before the entry of a default judgment. Mendoza v. Wight Vineyard Management, 783 F.2d 941, 945 (9th Cir. 1986). In evaluating a motion to set aside default rather than a default judgment, any doubt should be resolved in favor of the motion to set aside the default so that cases may be decided on their merits. O'Connor v. State of Nev., 27 F.3d 357, 364 (9th Cir. 1994).

10 Because Plaintiff does not object to an order setting aside default and in light of the strong preference for deciding matters on the merits, the Court finds that there is good cause to set aside 12 Defendant's default that was entered on March 26, 2010, subject to certain conditions. Accordingly, 13 Plaintiff's Motion for Default Judgment is denied as moot. No later than January 11, 2011, Defendant shall serve and file his responsive pleading to Plaintiff's complaint. If Defendant fails to 14 15 serve and file his responsive pleading by January 11, 2011, the clerk shall immediately enter 16 Defendant's default. Thereafter, Plaintiff may re-file its Motion for Default Judgment, with notice 17 to Defendant, for hearing on January 25, 2011.

18 If Defendant has not done so already, he may wish to seek assistance from the Legal Help 19 Center, a free service of the Volunteer Legal Services Program, by calling 415.782.9000 x8657 or 20 signing up for an appointment on the 15th Floor of the Courthouse, Room 2796. At the Legal Help 21 Center, Defendant may speak with an attorney who may be able to provide basic legal help, but not 22 legal representation. The Court also urges Defendant to obtain a copy of the Pro Se Handbook, 23 available free of charge from the Court's website (www.cand.uscourts.gov) or in the Clerk's Office 24 on the 16th Floor, 450 Golden Gate Avenue, San Francisco, CA.

25 The Court is mindful that on October 29, 2010, Defendant filed a Motion to Transfer this 26 case to the Eastern District of California, which he set for hearing on November 30, 2010. Because 27 Defendant did not provide the required thirty-five day notice for his motion (see Civil L.R. 7-2(a)), 28 //

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the Court will hear Defendant's Motion to Transfer on December 14, 2010 at 3:00 p.m. IT IS SO ORDERED. Elizabeth D. Laporte ELIZABETH D. LAPORTE Dated: November 5, 2010 United States Magistrate Judge