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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

SCOTT JOHNSON,

Plaintiff,

v.

GIOVANNI HOLDINGS, et al.,

Defendants.

No. 2:14-cv-01748-MCE-AC

**ORDER**

On July 24, 2014, Plaintiff Scott Johnson (“Plaintiff”) filed the instant action against defendants Giovanni Holdings (“Defendant”) and Charleanne Cannon (“Cannon”). ECF No. 1. On August 7, 2014, a Summons as to Defendant was returned as executed on August 1, 2014. ECF No. 4. Because Defendant failed to timely respond to the Complaint, Plaintiff requested, and the Clerk of the Court issued, an Entry of Default on September 8, 2014. See ECF Nos. 6-7. On September 18, 2014, Defendant filed an untimely Answer. Now, through a joint stipulation, the parties seek to set aside the entry of default as to Defendant.

Federal Rule of Civil Procedure 55(c)<sup>1</sup> provides that “[f]or good cause shown the court may set aside an entry of default and, if a judgment by default has been entered,

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<sup>1</sup> All further references to “Rule” or “Rules” are to the Federal Rules of Civil Procedure unless otherwise stated.

1 may likewise set it aside in accordance with Rule 60(b).” The Ninth Circuit has indicated  
2 that a district court’s discretion is “especially broad where . . . it is entry of default that is  
3 being set aside, rather than a default judgment.” Mendoza v. Wight Vineyard Mgmt.,  
4 783 F.2d 941, 945 (9th Cir. 1986) (internal citation omitted); see also Brady v. United  
5 States, 211 F.3d 499, 504 (9th Cir. 2000). The defaulting party bears the burden of  
6 establishing “good cause” to set aside an entry of default. Franchise Holding II, LLC v.  
7 Huntington Rests. Group, Inc., 375 F.3d 922, 925 (9th Cir. 2004). In determining  
8 whether there is good cause to set aside entry of default, the court considers:  
9 (1) whether the defaulting party engaged in culpable conduct which led to the default;  
10 (2) whether the defaulting party lacks a meritorious defense; and (3) whether setting  
11 aside the default would prejudice the party who obtained it. Mendoza, 783 F.2d at 946.  
12 These factors are disjunctive; therefore, the court may deny a Rule 55(c) motion if it finds  
13 present any one of the foregoing factors. Franchise Holding, 375 F.2d at 926 (internal  
14 citation omitted). However, where timely relief is sought from a default and the movant  
15 has a meritorious defense, doubt, if any, should be resolved in favor of the motion to set  
16 aside the default so that cases may be decided on their merits. Mendoza, 783 F.2d at  
17 946. The moving party need not file a noticed motion to set aside the entry of default;  
18 however, it must set forth sufficient rationale to demonstrate good cause in a manner  
19 permitted by this Court’s Local Rules and the Federal Rules of Civil Procedure, such as  
20 a stipulation, an ex parte application, or a noticed motion. See Judson Atkinson  
21 Candies, Inc. v. Latini-Hohberger Dhimantec, 529 F.3d 371, 385-86 (7th Cir. 2008)  
22 (explaining that Rule 55(c) does not require a motion).

23 On September 24, 2014, Plaintiff and Defendant submitted a joint stipulation and  
24 proposed order which states, in full, as follows: “The parties hereto, by and through their  
25 respective attorneys, do hereby Stipulate that the Default of Defendant Giovanni  
26 Holdings be set-aside and that any Default Judgment be vacated.” ECF No. 11. The  
27 parties’ stipulation is insufficient as it fails to set forth good cause as required by Rule  
28 55(c). See Mendoza, 783 F.2d at 946. Moreover, where the Clerk has already entered

1 default, a request for relief from the entry of default is not saved by the fact that there is  
2 an Answer on file.<sup>2</sup> See Stanley v. Heckler, 604 F. Supp. 1102, 1104 (D. Mont. 1985)  
3 (explaining that untimely responding to the complaint does not constitute “good cause,”  
4 even under the relaxed standard of Rule 55(c)); see also Cal. Practice Guide: Federal  
5 Civil Procedure Before Trial (The Rutter Group 2014) §§ 6:42-6:43 (noting that the entry  
6 of a defendant’s default cuts off his or her right to appear in the action, and, therefore,  
7 where a party seeks to file an answer after default has been entered, “[i]t is too late”);  
8 10A Wright, Miller & Kane, Federal Practice and Procedure 3d § 2692 (“Therefore, [the]  
9 defendant must request that the default be ‘excused’ and secure leave to answer before  
10 a responsive pleading will be recognized.”).<sup>3</sup> Therefore, given that Defendant bears the  
11 burden of establishing good cause to set aside an entry of default, the Court DENIES  
12 without prejudice the parties’ request to set aside the entry of default as to Defendant  
13 Giovanni Holdings (ECF No. 11).

14 IT IS SO ORDERED.

15 Dated: October 1, 2014

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19 MORRISON C. ENGLAND, JR., CHIEF JUDGE  
20 UNITED STATES DISTRICT COURT

21 <sup>2</sup> In contrast, as to Cannon, the filing of an untimely Answer was sufficient to warrant the Clerk’s  
22 denial of an entry of default because the request for default was made after the filing of Cannon’s  
23 response. See ECF Nos. 5, 8-10; Cal. Practice Guide: Federal Civil Procedure Before Trial (The Rutter  
24 Group 2014) §§ 6:28-29 (explaining that no default can be entered if defendant filed an untimely response  
25 indicating its intent to defend the action prior to the entry of default).

26 <sup>3</sup> For the reasons set forth above, the Defendant’s untimely Answer is insufficient to warrant the  
27 setting aside of the entry of default. However, the Court notes that the information contained within that  
28 filing, were it included within the parties’ request, may demonstrate that Defendant has a meritorious  
defense so as to constitute good cause. Compare Tri-Continental Leasing Corp. v. Zimmerman,  
485 F. Supp. 495, 497–499 (N.D. Cal.1980) (holding that conclusory allegations are insufficient to set  
aside default, and parties must provide adequate factual and legal bases for defenses) with McColm v.  
Restoration Group, Inc., 2007 WL 738770, \*2 (E.D. Cal. Mar. 7, 2007) (“Given the questions raised by  
defendants in their motion to dismiss, their apparent desire to contest this action, and the policy favoring  
cases to be tried on their merits, the court hereby denies plaintiff’s ex parte motion for an order requiring  
the Clerk to enter default.”).