

1 **DISCUSSION**

2 1. Pending Motions Which Have Been Rendered Moot

3 The following mooted motions remain pending: (1) the amended motion to
4 dismiss Plaintiff’s second amended complaint filed by Defendant Basic Laboratory, Inc., see ECF
5 No. 34; (2) the motion to dismiss Plaintiff’s second amended complaint filed by Defendants
6 Lucas and the law firm Murphy, Pearson, Bradley & Feeney, see ECF No. 37; (3) the motion to
7 strike Plaintiff’s second amended complaint under California’s statute prohibiting strategic
8 litigation against public participation filed by Defendants Lucas and the law firm Murphy,
9 Pearson, Bradley & Feeney, see ECF No. 38; (4) the motion to dismiss Plaintiff’s third amended
10 complaint filed by Defendant Basic Laboratory, Inc., see ECF No. 44; (5) the motion for
11 sanctions filed by Defendant Basic Laboratory, Inc., see ECF No. 46; (6) the motion to dismiss
12 Plaintiff’s third amended complaint filed by Defendants Winston and the law firm Kirsher,
13 Winston & Boston, see ECF No. 108; and (7) the motion to strike Plaintiff’s third amended
14 complaint under California’s statute prohibiting strategic litigation against public participation
15 filed by Defendants Winston and the law firm Kirsher, Winston & Boston, see ECF No. 109.

16 A review of the docket reflects that Defendant Basic Laboratory, Inc., was
17 dismissed on November 9, 2021, pursuant to the parties’ stipulation. See ECF No. 168 (District
18 Judge minute order). Therefore, the motions at ECF Nos. 44 and 46 filed by Defendant Basic
19 Laboratory, Inc., are now moot.

20 As to the remaining motions challenging Plaintiff’s second amended complaint, a
21 review of the docket reflects that Plaintiff filed a third amended complaint within 21 days after
22 service of the earliest-filed motion. The Federal Rules of Civil Procedure provide that a party
23 may amend his or her pleading once as a matter of course within 21 days of serving the pleading
24 or, if the pleading is one to which a responsive pleading is required, within 21 days after service
25 of the responsive pleading, see Fed. R. Civ. P. 15(a)(1)(A), or within 21 days after service of a
26 motion under Rule 12(b), (e), or (f) of the rules, whichever time is earlier, see Fed. R. Civ. P.
27 15(a)(1)(B).

28 ///

1 Here, Plaintiff's first and second amended complaint were filed pursuant to the
2 Court's direction after the Court screened the prior pleadings. See ECF No. 5 (order dismissing
3 original complaint with leave to amend), ECF No. 9 (order dismissing first amended complaint
4 with leave to amend). The earliest of the three motions challenging the second amended
5 complaint was filed on July 2, 2019. See ECF No. 34. The latest motions challenging the second
6 amended complaint were both filed on July 22, 2019. See ECF Nos. 37 and 38. Plaintiff filed her
7 third amended complaint on July 22, 2019. See ECF No. 40. Because Plaintiff's third amended
8 complaint was filed within 21 days after service of the earliest-filed motion challenging the
9 second amended complaint, Plaintiff's third amended complaint was filed as of right. The filing
10 of the third amended complaint, which did not require a court order, and which superseded the
11 second amended complaint, rendered the three motions challenging the second amended
12 complaint moot.

13 As to mooted motions, also pending on the docket are motions to dismiss and
14 strike filed by Defendants Winston and the law firm Kirsher, Winston & Boston, ECF Nos. 108
15 and 109, along with amended notices at ECF No. 153 and 154. The amended notice purport to re-
16 set the hearing date for the motions to dismiss and strike at ECF No. 108 and 109. There is no
17 briefing filed with ECF Nos. 153 and 154. Looking to the briefing accompanying ECF Nos. 108
18 and 109, the Court observes that the motions challenge the allegations in the second amended
19 complaint, which has been superseded by the timely filing of Plaintiff's third amended complaint
20 as of right. Therefore, the motions to dismiss and strike, as well as the amended notices for those
21 motions, have also been rendered moot by the filing of the third amended complaint. The Clerk
22 of the Court will be directed to terminate these entries as pending motion.

23 2. Plaintiff's Motions for Reconsideration

24 The following motions are pending: (1) Plaintiff's motion for reconsideration of
25 the Court's order at ECF No. 138, see ECF No. 139; and (2) Plaintiff's motion for reconsideration
26 of the Court's order at ECF No. 160, see ECF No. 162.

27 ///

28 ///

1 In her filing at ECF No. 139, Plaintiff seeks reconsideration of the Court's order at
2 ECF No. 138 striking Plaintiff's motion at ECF No. 116 to strike affirmative defenses asserted by
3 Defendant Julie Bowles in her answer. See ECF No. 139. In the order at ECF No. 138, the Court
4 struck Plaintiff's motion because it had not been noticed for a hearing. As Plaintiff notes, this
5 was in error. Plaintiff's notice indicates a hearing date. Plaintiff's motion, however, was
6 untimely because it was not filed within 21 days after Defendant Bowles served her answer. See
7 Fed. R. Civ. P. 12(f)(2). Defendant Bowles' answer was served on January 9, 2020. See ECF
8 No. 88. Plaintiff's motion to strike was untimely filed on February 28, 2020. While Plaintiff's
9 motion was improperly stricken for failure to notice a hearing, it was properly stricken as
10 untimely. The Court will grant reconsideration insofar as the prior order is clarified to reflect the
11 correct reason for striking Plaintiff's motion.

12 In her filing at ECF No. 162, Plaintiff seeks reconsideration of the Court's order at
13 ECF No. 160 submitting motions to dismiss and strike filed by Defendants Winston and law firm
14 Kirsher, Winston & Boston on the papers and vacating the hearing on those motions. See ECF
15 No. 162. According to Plaintiff, the Court ignored Plaintiff's objections at ECF No. 159. The
16 Court vacated the hearing on the motions to dismiss and strike because Plaintiff had not filed
17 oppositions thereto. See ECF No. 160. Plaintiff contends the order at ECF No. 160 is in error
18 because the Court's prior order cut off any chance of briefing. See ECF No. 162.

19 Plaintiff's objections at ECF No. 159 related to the Court's order at 156 submitting
20 other pending motions without oral argument. Thus, the objections had no bearing on the Court's
21 order at ECF No. 160 Plaintiff now challenges. There are no orders on the docket which "cut off"
22 Plaintiff's opportunity to brief the motions filed by Defendants Winston and law firm Kirsher,
23 Winston & Boston and, for this reason, there is no basis for reconsideration of the Court's order.

24 3. Motion for Finalization of Settlement and Entry of Judgment

25 Defendant Gifford seeks a court order finalizing a settlement agreement reached
26 with Plaintiff. See ECF No. 144. Defendant Gifford seeks entry of judgment pursuant to the
27 settlement agreement in the amount of \$50,000.00. See id. Defendant Gifford also seeks
28 dismissal from the action. See id. Here, Defendant Gifford is sued for his conduct while a

1 member of the Board of Directors of Defendant Hornbrook Community Services District. See
2 ECF No. 40 pg. 4 (third amended complaint). Thus, any settlement would be paid by Defendant
3 Hornbrook Community Services District. The Court also notes that Ms. Olson and Mr. Gifford
4 are Plaintiffs in other cases against Defendant Hornbrook Community Services District and its
5 former and current board members. These various actions, as well as prior now-closed actions
6 filed by Peter Harrell, all proceed on strikingly similar pleadings, suggesting some level of
7 cooperation, at least between Ms. Olson and Mr. Gifford. The current motion appears nothing
8 more than an attempt to convince the Court to endorse a judgment which would impose a
9 payment obligation on Defendant Hornbrook Community Services District in advance of any
10 finding of liability on that party's part. While the Court is aware of the requirement for Court
11 approval of a minor's compromise, the Court is aware of no authority permitting the relief
12 requested under the circumstances presented here, and Defendant Gifford cites to none. To the
13 extent Plaintiff wishes to voluntarily dismiss Defendant Gifford, the parties may file a stipulated
14 dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1). In the meantime, Defendant
15 Gifford's motion will be denied.

16 4. Request to Set Aside Defaults

17 After filing of the third amended complaint, the following defendants waived
18 service: Barnes, Hornbrook Community Bible Church, Crittenden, Puckett, Hornbrook
19 Community Services District, Martin, Brown, Goff, Gifford, Hanson, see ECF No. 74, Bowles,
20 see ECF No. 85, and King, see ECF No. 98. Summons was returned executed by the United
21 States Marshal as to Defendants Dingman, Winston, and the law firm of Kirsher, Winston &
22 Boston. See ECF No. 101. Defendants Barnes and Bowles filed answers. See ECF Nos. 72 and
23 88. Defendants Winston and the law firm of Kirsher, Winston & Boston have filed motions to
24 dismiss and strike, which are pending. See ECF Nos. 153 and 154.

25 On Plaintiff's request, the Clerk of the Court entered defaults for Defendants
26 Brown, Crittenden, Hanson, Hornbrook Community Bible Church, Hornbrook Community
27 Services District, Martin, Puckett, Kingman, and King. See ECF Nos. 93 and 114. Plaintiff has
28 filed four separate motions for default judgments as against Defendants Hornbrook Community

1 Services District, Brown, Hanson, Puckett, see ECF No. 140, Defendant Dingman, see ECF No.
2 141, Defendants Hornbrook Community Bible Church, Crittenden, Martin, see ECF No. 142, and
3 Defendant King, see ECF No. 143. In opposition to Plaintiff's motions at ECF Nos. 140 and 141,
4 Defendants Hornbrook Community Services District, Hanson, Brown, Barnes, Dingman, Goff,
5 and Bowles have filed a request to set aside defaults along with a proposed answer to Plaintiff's
6 third amended complaint. See ECF No. 148. These defendants claim excusable neglect. See id.

7 At the outset, the Court notes that Defendants Barnes and Bowles have filed
8 separate answers to the third amended complaint and no defaults have been entered as against
9 them. The proposed answer submitted with Defendants' request to set aside default purports to
10 answer on their behalf, apparently as an amended answer. Further, though Defendant Goff joins
11 in the request to set aside defaults, the docket does not reflect that the Clerk of the Court entered
12 Defendant Goff's default, and Plaintiff does not seek a default judgment as against this defendant.
13 The proposed answer to the third amended complaint, however, does purport to respond on behalf
14 of Defendant Goff, who waived service. Additionally, though Defendant Puckett waived service
15 and his default has been entered, Defendant Puckett is not joined in the request to set aside
16 defaults and the proposed answer to the third amended complaint does not list Defendant Puckett.
17 Thus, the request to set aside defaults applies only to Defendants Hornbrook Community Services
18 District, Hanson, Brown, and Dingman (collectively Defaulting Defendants). Plaintiff's motions
19 for default judgments as against Defendants Puckett, Hornbrook Community Bible Church,
20 Crittenden, Martin, and King are addressed by findings and recommendations issued separately.

21 Defaults are disfavored and, under Federal Rule of Civil Procedure 55(c), the
22 Court has the discretion to set aside the Clerk of the Court's entry of default. See Eitel v. McCool,
23 782 F.2d 1470, 1472 (9th Cir. 1986). Good cause must be shown to set aside entry of default. See
24 Fed. R. Civ. P. 55(c). In evaluating whether good cause exists, the Court considers: (1) whether
25 the party seeking to set aside the default engaged in culpable conduct that led to the default; (2)
26 whether the defaulting party has meritorious defenses; or (3) whether prejudice would result to
27 the party opposing a motion to set aside the default. See United States v. Mesle, 615 F.3d 1085,
28 1091 (9th Cir. 2010). The standard is disjunctive, meaning that a finding that any factor is true is

1 sufficient reason for the Court to decline to set aside a default entered by the Clerk of the Court.
2 See TCI Group Life Ins. Plan v. Knoebber, 244 F.3d 691, 696 (9th Cir. 2001). Where, however,
3 the party seeking to set aside entry of default has a meritorious defense, any doubt should be
4 resolved in favor of setting aside the default so the case may be decided on the merits. See
5 Mendoza v. Wright Vineyard Mgmt., 783 F.2d 941, 945-46 (9th Cir. 1986). A case should,
6 whenever possible, be decided on the merits and not by way of the drastic step of a default
7 judgment. See Falk v. Allen, 739 F.2d 461, 463 (9th Cir. 1984).

8 A defendant's conduct is culpable in the context of a default when the defendant
9 has actual or constructive notice of the filing of the action and intentionally fails to answer. See
10 TCI Group Life, 244 F.3d at 697. The negligent failure to answer coupled with a good faith
11 explanation does not constitute intentional conduct. See id. at 697-98. The "meritorious defense"
12 requirement is not extraordinarily heavy. See Mesle, 615 F.3d at 1094. All that is required is the
13 allegation of sufficient facts which, if true, would constitute a defense. See id. The veracity of
14 such allegations is not to be determined in the context of a motion to set aside entry of defaults
15 but is the subject of later litigation. See id. In other words, the allegations relating to potential
16 defenses are presumed true when deciding a motion to set aside entry of default. See id.
17 Prejudice exists when the ability to present a case by that party who is opposing a motion to set
18 aside entry of defaults will be hindered if the defaults are set aside. See TCI Group, 244 F.3d at
19 696. Denial of a quick victory by way of a default judgment does not constitute prejudice. See
20 Bateman v. United States Postal Service, 231 F.3d 1220, 1225 (9th Cir. 2000).

21 Having considered these factors, the Court finds that good cause exists to set aside
22 the defaults of the Defaulting Defendants and to allow filing of their proposed answer to
23 Plaintiff's third amended complaint. First, the Defaulting Defendants' conduct has not been
24 demonstrated to be culpable. As the Defaulting Defendants note in their request to set aside
25 defaults, this case is just one in a long string and far-reaching litigation campaign mounted by Ms.
26 Olson and, in other cases, Mr. Gifford. The Court accepts the Defaulting Defendants'
27 representation that the failure to respond in this particular action was the result of excusable
28 neglect resulting from confusion caused by multiple cases filed by the same plaintiffs in both state

1 and federal court. See TCI Group Life, 244 F.3d at 697-98. Second, a review of the proposed
2 answer to Plaintiff's third amended complaint reflects that the Defaulting Defendants have
3 meritorious defenses. See ECF No. 148-1 (proposed answer to third amended complaint); see
4 also Mesle, 615 F.3d at 1094. Finally, Plaintiff has not demonstrated that any prejudice that will
5 result should the Court set aside defaults here.

6
7 **CONCLUSION**

8 Accordingly, IT IS HEREBY ORDERED as follows:

- 9 1. The docket entries at ECF Nos. 34, 37, 38, 44, 46, 108, 109, 153 and 154
10 have been rendered moot by subsequent procedural history.
- 11 2. Plaintiff's motion for reconsideration, ECF No. 139, is GRANTED insofar
12 as the Court's order at EF No. 138 is hereby clarified to reflect that Plaintiff's motion to strike at
13 ECF No. 116 is stricken as untimely.
- 14 3. Plaintiff's motion for reconsideration, ECF No. 162, is DENIED.
- 15 4. Defendant Gifford's motion for finalization of a settlement agreement,
16 ECF No. 144, is DENIED.
- 17 5. Defaults entered as to Defendants Hornbrook Community Services District,
18 Hanson, Brown, and Dingman are SET ASIDE.
- 19 6. The Clerk of the Court is directed to file the proposed answer to Plaintiff's
20 third amended complaint at ECF No. 148-1.
- 21 7. Plaintiff's motions for default judgment, ECF Nos. 140 and 141, are
22 DENIED as moot with respect to Defendants Hornbrook Community Services District, Hanson,
23 Brown, and Dingman.
- 24 8. The Clerk of the Court is directed to terminate ECF Nos. 34, 37, 38, 44, 46,
25 108, 109, 139, 141, 144, 153, 154, and 162 as pending motions.

26 Dated: March 4, 2024



27 DENNIS M. COTA
28 UNITED STATES MAGISTRATE JUDGE