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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CALIFORNIA BREWING COMPANY, a  
California corporation,

Plaintiff and Counter-  
Defendant,

v.

3 DAUGHTERS BREWING, LLC, a  
Florida Limited Liability Company;  
LMMML, LLC, a Florida Liability  
Company,

Defendant and Counter-  
Claimants.

No. 2:15-cv-02278-KJM-CMK

ORDER

This matter is before the court on the motion to set aside the clerk's entry of default by plaintiff/counter-defendant California Brewing Company ("CBC"). Mot. Set Aside Default (Mot.), ECF No. 40. The Clerk certified an entry of default on September 2, 2016 after CBC failed to timely respond to counterclaims by defendants/counter-claimants 3 Daughters Brewing, LLC ("3DB") and LMMML, LLC ("LM"). See Entry of Default (Default), ECF No. 38; Defs.' App. for Entry of Default (Defs.' App.), ECF No. 37. CBC's motion is unopposed, and the motion was submitted without a hearing. As explained below, the motion is GRANTED.

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1 I. BACKGROUND

2 This action arises from the defendants' alleged use of plaintiff's "Beach Blonde  
3 Ale" mark. *See* Order, ECF No. 23.<sup>1</sup>

4 Plaintiff CBC filed a complaint on November 2, 2015. Compl., ECF No. 1.  
5 Defendants filed a motion to dismiss and transfer venue on December 3, 2015. The court denied  
6 the motion on April 19, 2016. Mot. Dismiss, ECF No. 10; Order, ECF No. 23. On May 2, 2016,  
7 defendants filed an answer, affirmative defenses, and counterclaim. Answer, Aff. Defenses,  
8 Counterclaim (Counterclaim), ECF No. 24. Although plaintiff filed a timely answer to  
9 defendants' counterclaim on May 23, 2016, the court subsequently granted the defendants'  
10 motion to amend the answer and counterclaim. Pl.'s Answer, ECF No. 29; Order, ECF No. 35.

11 Defendants filed their amended answer and counterclaim on August 8, 2016. Am.  
12 Answer, ECF No. 36. On September 1, 2016, defendants applied for an entry of default, noting  
13 that plaintiff failed to timely respond to defendants' amended counterclaim within twenty-one  
14 days of service, by August 29, 2016. Defs.' Appl.; Fed. R. Civ. P. 12(a)(1)(B). The Clerk  
15 entered default on September 2, 2016.

16 Plaintiff filed the current motion to set aside entry of default on September 10,  
17 2016. Mot. Plaintiff claims he missed the deadline to submit an answer due to a "calendar  
18 error." *Id.* at 2. Plaintiff further avers that, due to his prompt meet and confer efforts initiated  
19 soon after learning about the entry of default, defendants have agreed not to oppose plaintiff's  
20 motion. *Id.*

21 II. STANDARD

22 A clerk's entry of default may be set aside for "good cause." Fed. R. Civ. P. 55(c).  
23 "To determine 'good cause,' a court must consider three factors: (1) whether the party seeking to  
24 set aside the default engaged in culpable conduct that led to the default; (2) whether it had no  
25 meritorious defense; or (3) whether reopening the default judgment would prejudice the other

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26 <sup>1</sup> For simplicity's sake, plaintiff/counter-defendant is referred to throughout this Order as  
27 "plaintiff" and defendants/counter-claimants are referred to as "defendants."  
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1 party.” *United States v. Signed Pers. Check No. 730 of Yubran S. Mesle*, 615 F.3d 1085, 1091  
2 (9th Cir. 2010) (“*Mesle*”) (citing *Franchise Holding II, LLC v. Huntington Rests. Grp., Inc.*,  
3 375 F.3d 922, 925–26 (9th Cir. 2004) (“*Franchise Holding II*”). Although the “good cause”  
4 standard is the same that applies to motions to set aside default judgment under Rule 60(b), the  
5 test is “more liberally applied” in the Rule 55(c) context. *Mesle*, 615 F.3d at 1091 n.1; *see also*  
6 *Brady v. United States*, 211 F.3d 499, 504 (9th Cir. 2000) (finding district court’s discretion is  
7 “especially broad” when setting aside entry of default, rather than default judgment). Because the  
8 test described above is disjunctive, a motion to set aside the entry of default may be refused in the  
9 presence of any one of the three factors. *Brandt v. Am. Bankers Ins. Co. of Fla.*, 653 F.3d 1108,  
10 1111 (9th Cir. 2011). The court therefore reviews each.

### 11 III. ANALYSIS

12 Plaintiff argues its actions were not culpable, that it has a meritorious defense to  
13 defendants’ counterclaims, and that setting aside the entry of default will not result in prejudice to  
14 the defendants. The court examines the three *Mesle* factors in turn and concludes that plaintiff in  
15 fact reacted promptly in light of the calendaring error and has met its burden to set aside the  
16 default.

#### 17 A. Culpability

18 A defaulting defendant acts “culpably” if it had notice of the lawsuit but  
19 intentionally declined to answer. *TCI Grp. Life Ins. Plan v. Knoebber*, 244 F.3d 691, 697 (9th  
20 Cir. 2001), *overruled on other grounds*, *Egelhoff v. Egelhoff ex rel. Breiner*, 532 U.S. 141, 147  
21 (2001); *see also Broadcast Music, Inc.*, 2013 WL 6564309, at \*2. “Intentional” conduct in this  
22 sense is “willful,” “deliberate,” or in “bad faith,” rather than neglectful. *Knoebber* at 697–98. It  
23 means an “intention to take advantage of the opposing party, interference with judicial  
24 decisionmaking, or otherwise manipulate the legal process.” *Mesle*, 615 F.3d at 1092. If the  
25 party’s explanations for its default are all consistent with a willful or bad faith failure to respond,  
26 the court may refuse to set aside its default. *Knoebber* at 697–98 (collecting cases).

27 Here, plaintiff points to an administrative mistake—a “calendaring error”—of  
28 which it was unaware until defendants’ application for entry of default. The speed with which

1 plaintiff responded to the entry of default supports plaintiff's claim that this was an unknowing  
2 mistake: the court entered default on September 2, plaintiff's counsel contacted defendants over  
3 the holiday weekend and offered to meet and confer on September 6, and plaintiff submitted the  
4 current motion along with the overdue answer on September 10. *See* Pl.'s Answer, ECF No. 39;  
5 Mot. 2. In light of plaintiff's earlier timely response to defendants' first answer and counterclaim,  
6 a response that remains substantially unchanged in plaintiff's proffered response to the amended  
7 counterclaim, the court finds no "willful," "deliberate," or "bad faith" conduct. *See* ECF No. 40  
8 at 5. CBC has not acted culpably.

9 B. Meritorious Defense

10 Second, regarding a meritorious defense, "[a]ll that is necessary to satisfy the  
11 'meritorious defense' requirement is to allege sufficient facts that, if true, would constitute a  
12 defense." *Mesle*, 615 F.3d at 1094. This is not an "extraordinarily heavy" burden. *TCI Grp.*,  
13 244 F.3d at 700.

14 Here, plaintiff points to its complaint and its answer to defendants' initial  
15 counterclaim as the basis for its "meritorious defense." Mot. 5. Defendants' counterclaim seeks  
16 (1) a declaration of non-infringement of CBC's rights and (2) a declaration that CBC's rights in  
17 "Beach Blonde Ale" are invalid and unenforceable. Am. Answer, ECF No. 36 at 10, 21. Much  
18 of defendants' claim relies on the relative timing of CBC's and 3DB's first use of the mark. *Id.*  
19 Plaintiff's complaint alleges creating the recipe for its beer in 2007, being issued a federal  
20 trademark for "Beach Blonde Ale" in 2008, and working to build the "Beach Blond Ale" brand  
21 for "more than half a decade." Compl. 6. Moreover, plaintiff's initial answer to defendants'  
22 counterclaim asserted numerous denials of allegations in the counterclaim, including those  
23 regarding the timing of CBC's use of the mark. Pl.'s Answer, ECF No. 29. Finally, plaintiff's  
24 answer asserts affirmative defenses that, if proven, would undermine defendants' allegations  
25 made in the counterclaim, such as abandonment of rights, laches, waiver, acquiescence, and  
26 estoppel. Pl.'s Answer, ECF No. 29 at 12-13. Thus, CBC has a meritorious defense sufficient to  
27 support its motion. The defenses asserted in CBC's answer to the amended counterclaim, which  
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1 will be deemed filed upon granting of the motion to set aside entry of default, are consistent with  
2 the defenses identified in the initial answer and so do not alter this conclusion. *See* ECF No. 39.

3 C. Prejudice

4 Lastly, the court may refuse to set aside the entry of default if doing so would  
5 prejudice defendants' case. "To be prejudicial, the setting aside of a judgment must result in  
6 greater harm than simply delaying resolution of the case." *TCI Grp.*, 244 F.3d at 701. Only  
7 tangible harm, such as the loss of evidence, complication of discovery, or the risk of fraud or  
8 collusion, will support the denial of a motion to set aside the entry of default. *Id.* A plaintiff is  
9 not prejudiced if forced only to litigate the merits of his case. *Id.*

10 Here, plaintiff argues delay will not impair defendants' ability to pursue their  
11 claims. The delay caused by plaintiff's error is minimal and does not affect the other dates in the  
12 case schedule. *See* Status Order, ECF No. 30. Defendants' lack of opposition to plaintiff's  
13 motion further supports plaintiff's claim that no prejudice results. Defendants will not be  
14 prejudiced by the granting of plaintiff's motion.

15 IV. CONCLUSION

16 CBC's motion to set aside the entry of default is GRANTED. As a result, CBC's  
17 request that the court accept its Answer to Counterclaim is also GRANTED and the Answer is  
18 deemed filed.

19 This order resolves ECF No. 40.

20 IT IS SO ORDERED.

21 DATED: November 17, 2016.

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25 UNITED STATES DISTRICT JUDGE  
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