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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MALIBU MEDIA, LLC,  
Plaintiff,  
v.  
SUSANA BAPTISTA,  
Defendant.

No. 2:16-cv-0348-JAM-KJN

ORDER

INTRODUCTION

In this action initially filed on February 18, 2016, plaintiff Malibu Media, LLC alleges that defendant Susana Baptista infringed plaintiff’s copyrights by using the BitTorrent File Distribution Network. (ECF No. 1.) After defendant failed to appear in the action, the Clerk of Court, upon plaintiff’s request, entered defendant’s default on December 20, 2016. (ECF No. 19.)

Presently pending before the court is plaintiff’s motion for default judgment. (ECF No. 20.) On March 1, 2017, defendant appeared through counsel and filed an opposition to the motion for default judgment as well as a request to set aside the Clerk’s entry of default. (ECF No. 26.) Plaintiff has not filed a reply or responded to defendant’s request to set aside the default. For the reasons that follow, the court SETS ASIDE the Clerk’s entry of default and DENIES WITHOUT PREJUDICE as moot plaintiff’s motion for default judgment.

1 DISCUSSION

2 Federal Rule of Civil Procedure 55 governs the entry of default by the clerk and the  
3 subsequent entry of default judgment by either the clerk or the district court. In relevant part,  
4 Rule 55(a) provides:

5 (a) Entering a Default. When a party against whom a judgment for  
6 affirmative relief is sought has failed to plead or otherwise defend,  
7 and that failure is shown by affidavit or otherwise, the clerk must  
enter the party's default.

8 Fed. R. Civ. P. 55(a).<sup>1</sup>

9 Federal Rule of Civil Procedure 55(c) provides that “[t]he court may set aside an entry of  
10 default for good cause....” The party seeking relief from the entry of default bears the burden of  
11 showing good cause to set aside the entry of default. See Franchise Holding II, LLC v.  
12 Huntington Rests. Group, Inc., 375 F.3d 922, 926 (9th Cir. 2004). A court considers three factors  
13 in determining whether good cause exists: “(1) whether [the party seeking to set aside the  
14 default] engaged in culpable conduct that led to the default; (2) whether [it] had [no] meritorious  
15 defense; or (3) whether reopening the default judgment would prejudice the other party.” United  
16 States v. Signed Personal Check No. 730 of Yubran S. Mesle, 615 F.3d 1085, 1091 (9th Cir.  
17 2010) (hereafter, “Mesle”) (modification in original) (quoting Franchise Holding II, LLC, 375  
18 F.3d at 925-26).

19 Under this disjunctively framed standard, “a finding that any one of these factors is true is  
20 sufficient reason for the district court to refuse to set aside the default.” Mesle, 615 F.3d at 1091;  
21 Brandt v. Am. Bankers Ins. Co., 653 F.3d 1108, 1111 (9th Cir. 2011). However, a court may  
22 within its discretion grant relief from default even after finding one of the “good cause” factors to  
23 be true. See, e.g., Brandt, 653 F.3d at 1112 (“A district court may exercise its discretion to deny  
24 relief to a defaulting defendant based solely upon a finding of defendant’s culpability, *but need*

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25 <sup>1</sup> As the Ninth Circuit Court of Appeals has stated, Rule 55 requires a “two-step process”  
26 consisting of: (1) seeking a clerk’s entry of default, and (2) filing a motion for the entry of  
27 default judgment. See Eitel v. McCool, 782 F.2d 1470, 1471 (9th Cir. 1986) (“Eitel apparently  
28 fails to understand the two-step process required by Rule 55”); accord Symantec Corp. v. Global  
Impact, Inc., 559 F.3d 922, 923 (9th Cir. 2009) (noting that Rules 55(a) and (b) provide a two-  
step process for obtaining a default judgment).

1 *not*) (emphasis added). “The court’s discretion is especially broad where...it is entry of default  
2 that is being set aside, rather than a default judgment.” O’Connor v. State of Nev., 27 F.3d 357,  
3 364 (9th Cir. 1994). The factors are more liberally applied with respect to a request to set aside  
4 the entry of default, because “there is no interest in the finality of the judgment with which to  
5 contend.” Mesle, 615 F.3d at 1091 n.1.

6 Additionally, the Ninth Circuit has emphasized that resolution of a motion to set aside the  
7 entry of default is necessarily informed by the well-established policies favoring resolution of  
8 cases on their merits and generally disfavoring default judgments. See Mesle, 615 F.3d at 1091  
9 (“Crucially,...judgment by default is a drastic step appropriate only in extreme circumstances; a  
10 case should, whenever possible, be decided on the merits”) (citations and quotation marks  
11 omitted); Westchester Fire Ins. Co. v. Mendez, 585 F.3d 1183, 1189 (9th Cir. 2009) (“As a  
12 general rule, default judgments are disfavored; cases should be decided upon their merits  
13 whenever reasonably possible”). Moreover, the Ninth Circuit’s “rules for determining when a  
14 default should be set aside are solicitous towards movants, especially those whose actions leading  
15 to the default were taken without the benefit of legal representation.” Mesle, 615 F.3d at 1089.

16 With the above principles in mind, the court proceeds to consider defendant’s request to  
17 set aside the clerk’s entry of default.

#### 18 Culpable Conduct

19 In this case, although defendant clearly failed to timely respond to plaintiff’s complaint in  
20 accordance with the Federal Rules of Civil Procedure, the court cannot conclude that defendant’s  
21 conduct was culpable under the standard set forth in Mesle. In Mesle, the Ninth Circuit explained  
22 that, at least where a defaulting defendant is not a lawyer and is unrepresented at the time of the  
23 default,:

24 [The] defendant’s conduct is culpable if he has received actual or  
25 constructive notice of the filing of the action and *intentionally*  
26 failed to answer...As we have previously explained, in this context  
27 the term “intentionally” means that a movant cannot be treated as  
28 culpable simply for having made a conscious choice not to answer;  
rather, to treat a failure to answer as culpable, the movant must  
have acted with bad faith, such as an intention to take advantage of  
the opposing party, interfere with judicial decisionmaking, or  
otherwise manipulate the legal process...We have typically held that

1 a defendant's conduct was culpable for purposes of the [good  
2 cause] factors where there is no explanation of the default  
3 inconsistent with a devious, deliberate, willful, or bad faith failure  
4 to respond...[I]t is clear that simple carelessness is not sufficient to  
5 treat a negligent failure to reply as inexcusable, at least without  
6 demonstration that other equitable factors, such as prejudice, weigh  
7 heavily in favor of a denial of the motion to set aside a default.

8 Mesle, 615 F.3d at 1092-93 (citations and quotation marks omitted).

9 The Ninth Circuit indicated that a more stringent standard likely applies to legally  
10 sophisticated parties, who may be deemed culpable merely if they "received actual or  
11 constructive notice of the filing of the action and failed to answer." Mesle, 615 F.3d at 1093.  
12 The Ninth Circuit reasoned that "[w]hen considering a legally sophisticated party's culpability in  
13 a default, an understanding of the consequences of its actions may be assumed, and with it,  
14 intentionality." Id.; see also Direct Mail Specialists, Inc. v. Eclat Computerized Techs., Inc., 840  
15 F.2d 685, 690 (9th Cir. 1988) ("Here, it is apparent that Eclat, through its president, Mr.  
16 Bujkovsky, had actual notice of the summons and complaint...Mr. Bujkovsky, as a lawyer,  
17 presumably was well aware of the dangers of ignoring service of process").

18 Here, defendant admits that she initially received a demand letter from plaintiff's counsel,  
19 and was subsequently served with the summons and complaint, but claims that she believed the  
20 correspondence and documents to be a scam and not a real lawsuit. Defendant indicates that she  
21 has never been involved in a lawsuit before and was not familiar with court procedures.  
22 Defendant only consulted an attorney once she received notice of a hearing that was scheduled on  
23 plaintiff's motion for default judgment, and it was the attorney who then explained to her that she  
24 was named as a defendant in an actual lawsuit. Defendant apologizes for her failure to timely  
25 respond, and posits that it was not her intent to delay or interfere with the court's administration  
26 of the case. (See Affidavit of Susana Baptista, ECF No. 26-1.)

27 Given that defendant is not an attorney or an otherwise legally sophisticated party, and  
28 that defendant has provided a plausible explanation suggesting that her failure to timely respond  
was not the result of bad faith, the court finds that plaintiff has not engaged in culpable conduct  
that led to the default.<sup>2</sup>

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<sup>2</sup> To be sure, pro se litigants, like all litigants, are required to comply with the Federal Rules of

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Lack of a Meritorious Defense

Defendant adamantly denies downloading or sharing plaintiff’s adult films. No discovery has yet been conducted at this early stage of the case, and the record is essentially undeveloped with respect to the merits of plaintiff’s claims or defendant’s potential defenses. At a minimum, the present record certainly does not affirmatively show the absence of a meritorious defense. As such, this factor does not counsel in favor of denying defendant’s request to set aside the default.

Prejudice

“To be prejudicial, the setting aside of a judgment [or clerk’s entry of default] must result in greater harm than simply delaying resolution of the case.” Mesle, 615 F.3d at 1095. Here, there is no indication that plaintiff’s ability to pursue its claim will be hindered by the delay in setting aside the Clerk’s entry of default. Moreover, the delay involved here is a short one, because although plaintiff filed the action in February 2016, plaintiff sought multiple extensions of time to complete service and did not serve defendant until November 2016. (ECF No. 17.)

In sum, taking all of the factors into consideration, the court finds that defendant has shown good cause to set aside the Clerk’s entry of default.

CONCLUSION

Accordingly, IT IS HEREBY ORDERED that:

1. The Clerk’s entry of default (ECF No. 19) is SET ASIDE.
2. Within 21 days of this order, defendant shall file her response to plaintiff’s operative first amended complaint.

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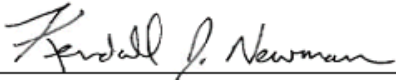
Civil Procedure, and may be subject to sanctions for failure to so comply. However, under Ninth Circuit law, defendant’s actions in this case do not rise to the level of culpable conduct sufficient to impose the harsh sanction of a default judgment.

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3. Plaintiff's motion for default judgment (ECF No. 20) is DENIED WITHOUT  
PREJUDICE as moot.

IT IS SO ORDERED.

Dated: March 17, 2017

  
KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE