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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

J & J SPORTS PRODUCTIONS, INC.,

No. C 13-2048 SI

Plaintiff,

**ORDER GRANTING DEFENDANT
SANCHEZ'S MOTION TO SET ASIDE
DEFAULT AND DENYING WITHOUT
PREJUDICE PLAINTIFF'S MOTIONS
FOR DEFAULT JUDGMENT**

v.

JAMES RICHARD SANCHEZ, individually and
d/b/a Casa Sanchez Restaurant; and FAMILIA
SANCHEZ ENTERPRISES, an unknown
business entity and d/b/a Casa Sanchez
Restaurant,

Defendant.

The motion by plaintiff J & J Sports Productions, Inc. ("J & J") for default judgment and the motion by defendant James Richard Sanchez to set aside default are scheduled for hearing on December 10, 2013. Pursuant to Civil Local Rule 7-1(b), the Court determines that these matters are appropriate for resolution without oral argument and VACATES the hearing. For the reasons set forth below, the Court GRANTS defendant James Sanchez's motion to set aside default and DENIES WITHOUT PREJUDICE plaintiff J & J's motions for default judgment.

BACKGROUND

Plaintiff, the exclusive licensor of the rights to exhibit certain closed circuit and pay-per-view sports programming, brought suit against defendant James Richard Sanchez, individually and d/b/a Casa

1 Sanchez Restaurant, operating at 2778 24th Street, San Francisco, CA, and defendant Familia Sanchez
2 Enterprises (“Familia Sanchez”), an unknown business entity and d/b/a Casa Sanchez Restaurant.
3 Plaintiff alleges it secured the domestic commercial exhibit rights to broadcast and license *Floyd*
4 *Mayweather Jr. v. Miguel Cotto, WBA Super World Light Middleweight Championship Fight Program*,
5 including the undercard bouts and commentary (“the Program”). Compl. ¶ 16. The complaint alleges
6 that the defendants showed the Program in their establishment without a license. *Id.* ¶¶ 9-12. Plaintiff’s
7 complaint alleges that defendants are liable under the Federal Communications Act, 47 U.S.C. § 605
8 *et seq.*, for receiving, intercepting and assisting in the receipt or interception of licensed programming.
9 *Id.* ¶¶ 15-24. The complaint also alleges claims for conversion and violation of California Business and
10 Professions Code Section 17200. *Id.* ¶¶ 30-43.

11 On May 2, 2013, J & J filed a complaint against the defendants, who never responded. Docket
12 No. 1, Compl. The Clerk entered default against defendant Familia Sanchez on July 15, 2013 and
13 entered default against defendant James Sanchez on August 15, 2013. Docket Nos. 12, 20.
14 Subsequently, J & J filed a motion for default judgment against Familia Sanchez and a motion for
15 default judgment against James Sanchez. Docket Nos. 13, 21.

16 On August 30, 2013, the Court held a hearing on plaintiff’s motion for default judgment against
17 Familia Sanchez. Defendant James Sanchez appeared at the hearing, and the Court ordered the parties
18 to speak with each other and continued the hearing. On October 11, 2013, Mr. Sanchez again appeared
19 at the hearing and stated that he would file a motion to set aside default. On October 30, 2013, Mr.
20 Sanchez filed the present motion to set aside default. Docket No. 29. To date, J & J has not filed an
21 opposition to Mr. Sanchez’s motion.

22 DISCUSSION

23 I. Defendant James Sanchez’s Motion to Set Aside Default

24 Pursuant to Federal Rule of Civil Procedure 55(c), a district court may set aside the entry of
25 default upon a showing of good cause. Fed. R. Civ. P. 55(c). To determine “good cause,” a court must
26 consider three factors: (1) whether the party seeking to set aside the default engaged in culpable conduct
27 that led to the default; (2) whether it had no meritorious defense; or (3) whether reopening the default
28

1 judgment would prejudice the other party. *United States v. Mesle*, 615 F.3d 1085, 1091 (9th Cir. 2010).
2 “This standard . . . is disjunctive, such that a finding that any one of these factors is true is sufficient
3 reason for the district court to refuse to set aside the default.” *Id.* However, even if one of the factors
4 goes against the defendant, the Court may still exercise its discretion and grant the motion. *See Brandt*
5 *v. Am. Bankers Ins. Co.*, 653 F.3d 1108, 1112 (9th Cir. 2011) (“A district court may exercise its
6 discretion to deny relief to a defaulting defendant based solely upon a finding of defendant’s culpability,
7 but need not.”). In considering a motion to set aside default, a court should bear in mind that “judgment
8 by default is a drastic step appropriate only in extreme circumstances; a case should, whenever possible,
9 be decided on the merits.” *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984). A district court’s
10 determination of whether to set aside the entry of default pursuant to Rule 55(c) is reviewed for abuse
11 of discretion. *Mesle*, 615 F.3d at 1091.

12 Here, all three factors weigh in favor of setting aside default. “[A] defendant’s conduct is
13 culpable if he has received actual or constructive notice of the filing of the action and *intentionally* failed
14 to answer.” *TCI Group Life Ins. Plan v. Knoebber*, 244 F.3d 691, 697 (9th Cir. 2001) (emphasis in
15 original). “[I]n this context the term ‘intentionally’ means that a movant cannot be treated as culpable
16 simply for having made a conscious choice not to answer; rather, to treat a failure to answer as culpable,
17 the movant must have acted with bad faith, such as an ‘intention to take advantage of the opposing party,
18 interfere with judicial decisionmaking, or otherwise manipulate the legal process.’” *Mesle*, 615 F.3d
19 at 1092. Defendant James Sanchez has not acted in bad faith in failing to answer. Mr. Sanchez
20 contends that he was not properly served with the complaint and states that he did not learn about the
21 lawsuit until August 15, 2013. Docket No. 29 at 2. Once he was notified of plaintiff’s complaint, Mr.
22 Sanchez contacted the Court’s Legal Help Center and then plaintiff’s counsel. *Id.* Mr. Sanchez has
23 engaged in settlement discussions to resolve the action and has appeared at the two hearings on
24 plaintiff’s motions for default judgment prior to filing the present motion to set aside default.

25 In addition, Mr. Sanchez has provided the Court with specific facts that would constitute a
26 meritorious defense. The Ninth Circuit has explained that the “meritorious defense” requirement “is
27 not extraordinarily heavy.” *Mesle*, 615 F.3d at 1094. “All that is necessary to satisfy [the] requirement
28 is to allege sufficient facts that, if true, would constitute a defense.” *Id.* Here, Mr. Sanchez states that

1 he does not own the restaurant Casa Sanchez and was not present when the Program aired. Docket No.
2 29 at 2, 4. These facts, if true, constitute a defense to plaintiff's claims.

3 Moreover, there is no evidence that plaintiff would be prejudiced by setting aside the default
4 against Mr. Sanchez. To be prejudicial, the setting aside of default must result in greater harm than
5 simply delaying resolution of the case. *TCI Group*, 244 F.3d at 701. Here, there is no evidence of any
6 harm to plaintiff other than delay. Indeed, plaintiff has not filed an opposition to Mr. Sanchez's motion.
7 Accordingly, the Court grants defendant James Sanchez's motion to set aside default.

8
9 **II. Plaintiff's Motion for Default Judgment Against James Sanchez**

10 J & J moves for the entry of default judgment against defendant James Sanchez. Docket No. 21.
11 The "entry of default by the clerk is a prerequisite to an entry of default judgment." *Vongrabe v. Sprint*
12 *PCS*, 312 F. Supp. 2d 1313, 1318 (S.D. Cal. 2004). Because the Court sets aside the entry of default
13 as to defendant James Sanchez, the Court denies without prejudice plaintiff's motion for default
14 judgment against him.

15
16 **III. Plaintiff's Motion for Default Judgment Against Familia Sanchez**

17 J & J has also moved for default judgment against defendant Familia Sanchez. Docket No. 13.
18 In *Frow v. De La Vega*, the Supreme Court cautioned that a court should not enter a default judgment
19 against a defendant that is, or is likely to be, inconsistent with a judgment on the merits as to the other
20 remaining defendants. 82 U.S. 552, 554 (1872). Therefore, where the defendants are jointly liable or
21 similarly situated, and one of them defaults, "judgment should not be entered against the defaulting
22 defendant until the matter has been adjudicated with regard to all defendants." *In re First T.D. &*
23 *Invest., Inc.*, 253 F.3d 520, 532 (9th Cir. 2001) (citing *Frow*, 82 U.S. at 554); *see also Shanghai*
24 *Automation Instrument CO. v. Kuei*, 194 F. Supp. 2d 995, 1008 (N.D. Cal. 2001) ("*Frow*'s applicability
25 turns not on labels such as 'joint liability' or 'joint and several liability,' but rather on the key question
26 of whether under the theory of the complaint, liability of all the defendants must be uniform.").

27 Here, the defendants are similarly situated. Plaintiff alleges the same facts and causes of action
28 against the two defendants. *See* Compl. ¶¶ 15-43. Accordingly, because defendant James Sanchez is


1 no longer in default, the Court DENIES J & J's motion for default judgment against Familia Sanchez
2 WITHOUT PREJUDICE to renewal at the conclusion of the case on the merits. *Cf. Garamendi v.*
3 *Henin*, 683 F.3d 1069, 1083 (9th Cir. 2012) (stating that the district court followed the proper procedure
4 where the court waited until completion of the trial against the non-defaulting defendants before fixing
5 damages and entering default judgment against the defaulting defendant).

6
7 **CONCLUSION**

8 For the foregoing reasons, the Court GRANTS defendant James Sanchez's motion to set aside
9 the entry of default and DENIES WITHOUT PREJUDICE J & J's motions for default judgment.
10 Docket Nos. 13, 21, 29. **In addition, the Court CONTINUES the initial case management**
11 **conference to Tuesday, December 10, 2013 at 2:30 p.m.**

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13 **IT IS SO ORDERED.**

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15 Dated: December 3, 2013

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18 SUSAN ILLSTON
19 UNITED STATES DISTRICT JUDGE
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