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7 **UNITED STATES DISTRICT COURT**  
8 **NORTHERN DISTRICT OF CALIFORNIA**  
9 **SAN FRANCISCO DIVISION**

10  
11 SUSAN SHELDON LEE,

12 Plaintiff,

13 v.

14 THORNBURG MORTGAGE HOME  
15 LOANS INC., and others,

16 Defendants.

Case No. 14-cv-00602 NC

**ORDER SETTING ASIDE DEFAULT  
AND DENYING MOTIONS FOR  
DEFAULT JUDGMENT AS TO BANK  
OF AMERICA AND THORNBURG**

Re: Dkt. Nos. 24, 27, 28, 29, 35

17  
18 Pending before the Court are motions for default judgment by pro se plaintiff Susan  
19 Lee against three of the defendants in this matter, Thornburg Mortgage Home Loans Inc.,  
20 TMST Home Loans, Inc. formerly known as Thornburg Mortgage Home Loans Inc.  
21 (collectively, “Thornburg”), and Bank of America, N.A., as well as those defendants’  
22 motions to set aside default. For the reasons set forth below, the Court finds that there is  
23 good cause to set aside default, and, therefore, DENIES WITHOUT PREJUDICE the  
24 motions for default judgment.

25 **I. BACKGROUND**

26 On February 7, 2014, Lee filed her complaint in this case. The complaint names as  
27 defendants Thornburg Mortgage Home Loans Inc. “in its capacity as originating lender and  
28 purported mortgage servicer,” TMST Home Loans, Inc. formerly known as Thornburg

Case No. 14-cv-00602 NC  
ORDER SETTING ASIDE DEFAULT;  
DENYING DEFAULT JUDGMENT

1 Mortgage Home Loans Inc. “as purported servicer,” Select Portfolio Servicing Inc. (“SPS”)  
2 “as purported servicer,” Mortgage Electronic Registration Systems Inc. (“MERS”) as  
3 “purported Nominee for Thornburg,” Quality Loan Services Corporation (“Quality”) “as  
4 purported Trustee under the Deed of Trust,” U.S. Bank National Association “(successor to  
5 Bank of America, N.A., successor by merger to LaSalle Bank N.A.), as Trustee, on behalf  
6 of the holders of the Thornburg Mortgage Securities Trust 2007-4 Mortgage Loan Pass-  
7 Through Certificates, Series 2007-4; (in its capacity as purported assignee of Plaintiff’s  
8 Deed of Trust),” and Bank of America, N.A. “successor by merger to LaSalle Bank N.A., as  
9 former Trustee, on behalf of the holders of the Thornburg Mortgage Securities Trust 2007-4  
10 Mortgage Loan Pass-Through Certificates, Series 2007-4.” Dkt. No. 1 at 7.

11 Lee alleges that, on June 28, 2007, she executed a deed of trust on her property at 20  
12 Kingsland Place, Oakland, California, as security for a loan. Dkt. No. 1 ¶¶ 5, 18. Lee  
13 further alleges that she “timely paid her mortgage payments when she began experiencing  
14 an unforeseen financial hardship.” *Id.* ¶ 19. Lee alleges that “there was an attempt to  
15 securitize the Mortgage by assigning and transferring the Mortgage” to the Thornburg trust  
16 “but the mortgage loan was never actually assigned and transferred.” *Id.* ¶ 22. Lee claims  
17 that this “fatal defect renders Defendants third-party strangers to the underlying debt  
18 obligation without the power or right to demand payment, declare default, negotiate her  
19 Loan, and foreclose on her Property.” *Id.* ¶¶ 30, 39, 85. Lee further alleges that the  
20 “failure of Defendants to assign her mortgage to LaSalle Bank as trustee of the Thornburg  
21 Trust, before the closing date of the trust or at any time, would not entitle [Bank of  
22 America] and/or U.S. bank to be the successor trustee due to the fact at no time any proper  
23 assignment was ever made to LaSalle Bank.” *Id.* ¶ 37. Lee alleges that defendants’  
24 “fabricated Assignment of Deed of Trust,” that “purports to assign from MERS (as nominee  
25 for Thornburg Mortgage Home Loans Inc.), to U.S Bank for value received, all beneficial  
26 interest under said Deed of Trust,” is void. *Id.* ¶ 41.

27 Lee’s complaint asserts nine causes of action, against all defendants unless otherwise  
28 noted, for: (1) Declaratory Relief; (2) Quasi Contract; (3) Negligence; (4) violations of the

1 Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692; (5) violations of the  
2 California Business and Professions Code § 17200; (6) violations of the Truth in Lending  
3 Act (“TILA”), 15 U.S.C. § 1641(g) (against U.S. Bank and Doe defendants); (7) violations  
4 of the Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. § 1962;  
5 (8) Fraud; and (9) Accounting. Dkt. No. 1. The relief sought by Lee includes no less than  
6 \$5,000,000 in damages, and “an order finding that Defendants have no legally cognizable  
7 rights as to Plaintiff, the Property, Plaintiff’s Promissory Note, Plaintiff’s Deed of Trust or  
8 any other matter based on contract or any of the documents prepared by Defendants,  
9 tendered to and executed by Plaintiff.” *Id.* at 48.

10 On March 5, 2014, Quality moved to dismiss the complaint. Dkt. No. 8. After  
11 obtaining a brief extension of their time to respond to the complaint from the Court,  
12 defendants SPS, MERS, and U.S. Bank, identified as the successor to Bank of America,  
13 filed a motion to dismiss the complaint on March 13, 2014. Dkt. No. 14.

14 On March 18, 2014, Lee filed requests for entry of default against Thornburg and  
15 Bank of America. Dkt. Nos. 16, 17, 18. On March 19, 2014, the Clerk of the Court entered  
16 default against those defendants. Dkt. No. 19. On March 20, 2014, counsel for Bank of  
17 America as Trustee filed a notice of appearance, stating that Bank of America “intends to  
18 vigorously defend this action and will immediately seek to vacate and set aside any notice  
19 of entry of default entered against it.” Dkt. No. 20. On March 21, 2014, Bank of America  
20 filed its motion to set aside default. Dkt. No. 24. On the same day, Lee filed motions for  
21 default judgment as to Bank of America and Thornburg. Dkt. Nos. 27, 28, 29. On March  
22 24, 2014, counsel for Thornburg filed a notice of appearance, stating Thornburg’s intent to  
23 defend the action and to seek to vacate and set aside entry of default. Dkt. No. 31. On  
24 April 2, 2014, Thornburg moved to set aside default. Dkt. No. 35. On April 3, 2014, Bank  
25 of America and Thornburg filed oppositions to Lee’s motions for default judgment. Dkt.  
26 Nos. 36, 37.

27 The Court scheduled the motions for default judgment and the motions to set aside  
28 default to be heard on the same day, prior to hearing the pending motions to dismiss the

1 complaint. Dkt. No. 38. The Court subsequently took the motions for default judgment and  
2 the motions to set aside default under submission, finding them suitable for disposition  
3 without oral argument. *See* Civ. L.R. 7-1(b).

4 The Court has federal question jurisdiction over the FDCPA, TILA, and RICO claims  
5 under 28 U.S.C. § 1331, and supplemental jurisdiction over the state law claims under 28  
6 U.S.C. § 1367. All parties have consented to the jurisdiction of a magistrate judge under 28  
7 U.S.C. § 636(c). Dkt. Nos. 4, 11, 13, 23, 32.

## 8 II. LEGAL STANDARD

9 Pursuant to Federal Rule of Civil Procedure 55(c), a district court “may set aside an  
10 entry of default for good cause.” Fed. R. Civ. P. 55(c). To determine whether a party has  
11 demonstrated “good cause,” a court must consider three factors: (1) whether the party  
12 seeking to set aside the default engaged in culpable conduct that led to the default;  
13 (2) whether it had no meritorious defense; or (3) whether reopening the default judgment  
14 would prejudice the other party. *United States v. Mesle*, 615 F.3d 1085, 1091 (9th Cir.  
15 2010).

16 The district court has discretion to determine whether a party has demonstrated “good  
17 cause” to set aside an entry of default. *Madsen v. Bumb*, 419 F.2d 4, 6 (9th Cir. 1969).  
18 “The court’s discretion is especially broad where, as here, it is entry of default that is being  
19 set aside, rather than a default judgment.” *Mendoza v. Wight Vineyard Mgmt.*, 783 F.2d  
20 941, 945 (9th Cir. 1986). “Where timely relief is sought from a default . . . and the movant  
21 has a meritorious defense, doubt, if any, should be resolved in favor of the motion to set  
22 aside the [default] so that cases may be decided on their merits.” *Id.* at 945-46 (quoting  
23 *Schwab v. Bullock’s Inc.*, 508 F.2d 353, 355 (9th Cir. 1974)); *Eitel v. McCool*, 782 F.2d  
24 1470, 1472 (9th Cir. 1986) (“[T]he general rule [is] that default judgments are ordinarily  
25 disfavored. Cases should be decided upon their merits whenever reasonably possible.”).

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### III. DISCUSSION

1  
2 A consideration of the three factors in this case supports setting aside the default  
3 entered against Bank of America and Thornburg. First, “a defendant’s conduct is culpable  
4 if he has received actual or constructive notice of the filing of the action and *intentionally*  
5 failed to answer.” *TCI Group Life Ins. Plan v. Knoebber*, 244 F.3d 691, 697 (9th Cir. 2001)  
6 (quoting *Alan Neuman Prods., Inc. v. Albright*, 862 F.2d 1388, 1392 (9th Cir. 1988)). “[I]n  
7 this context the term ‘intentionally’ means that a movant cannot be treated as culpable  
8 simply for having made a conscious choice not to answer; rather, to treat a failure to answer  
9 as culpable, the movant must have acted with bad faith, such as an ‘intention to take  
10 advantage of the opposing party, interfere with judicial decisionmaking, or otherwise  
11 manipulate the legal process.’” *Mesle*, 615 F.3d at 1092 (quoting *TCI Group*, 244 F.3d at  
12 697).

13 Bank of America argues that there is a reasonable explanation for its failure to file a  
14 responsive pleading in that Lee sued both U.S. Bank as Trustee and Bank of America as  
15 former Trustee only in their representative capacities for the Trust, and that “counsel  
16 reasonably deemed the present Trustee’s motion to dismiss as a response sufficiently  
17 protective of the Trust and any Trustee’s interests.” Dkt. Nos. 24 at 9; 24-1 ¶¶ 2, 9. In its  
18 motion to set aside default, Thornburg, the originator and original servicer of Lee’s loan,  
19 asserts that it has been subject to a Chapter 11 Bankruptcy proceeding since 2009, and that  
20 SPS acquired the servicing rights on Lee’s loan from Thornburg in 2010, following a  
21 motion and order initiated by the Thornburg Bankruptcy Trustee. Dkt. Nos. 35 at 8; 35-1  
22 ¶¶ 2, 5; 35-1 at 8-19, 21-22. Furthermore, Thornburg argues that SPS, as current servicer,  
23 and the present Trustee for the Trust, U.S. Bank, have already defended the action by filing  
24 a motion to dismiss. *See* Dkt. No. 14. Thornburg’s motion to set aside default further  
25 explains that, in investigating the file in this case, counsel for SPS discovered evidence of  
26 specific agreements between SPS and Thornburg, under which SPS may assume the defense  
27 of Thornburg in this matter, and met with the Thornburg Bankruptcy Trustee to confirm this  
28 understanding. Dkt. Nos. 35 at 8; 35-1 ¶¶ 2-3, 8-10.

1 While Bank of America and Thornburg have not provided any authority for the  
2 proposition that they do not need to respond to the complaint in this case, the Court finds  
3 that they have adequately demonstrated that their failure to respond was not in bad faith.  
4 Moreover, the record shows that Bank of America and Thornburg acted promptly in moving  
5 to set aside default. Accordingly, the Court finds that they have not engaged in culpable  
6 conduct that led to the default.

7 Second, “[a] defendant seeking to vacate a default judgment must present specific  
8 facts that would constitute a defense. But the burden on a party seeking to vacate a default  
9 judgment is not extraordinarily heavy.” *Mesle*, 615 F.3d at 1094. “All that is necessary to  
10 satisfy the ‘meritorious defense’ requirement is to allege sufficient facts that, if true, would  
11 constitute a defense.” *Id.* The motions to set aside default by Bank of America and  
12 Thornburg attach proposed motions to dismiss the complaint on multiple grounds, similar to  
13 those already asserted in the other defendants’ pending motions to dismiss. Those grounds  
14 include that the complaint is barred by res judicata following the dismissal of prior litigation  
15 by Lee, and that the complaint fails to state any claim on which relief may be granted  
16 because Lee lacks standing to assert her claim that the assignment of her mortgage loan to  
17 the Trust was invalid, and because she failed to allege “tender,” among other reasons. *See*  
18 Dkt. Nos. 24-1 at 9-46; 35-1 at 24-52. The Court has reviewed the proposed motions to  
19 dismiss and finds that Bank of America and Thornburg have presented legally cognizable  
20 defenses to the complaint.

21 Finally, the Court examines whether there is any prejudice to plaintiff that results  
22 from setting aside the default. “To be prejudicial, the setting aside of a judgment must  
23 result in greater harm than simply delaying resolution of the case. Rather, ‘the standard is  
24 whether [plaintiff’s] ability to pursue his claim will be hindered.’” *TCI Group*, 244 F.3d at  
25 701 (quoting *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984)). Here, Lee has not filed an  
26 opposition to the motions to set aside default. Based on the record before it, the Court finds  
27 that there is no evidence of any prejudice to Lee.

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1 **IV. CONCLUSION**

2 Because the three factors in the good cause analysis favor setting aside the entry of  
3 default pursuant to Rule 55(c), the motions to set aside the default against Bank of America  
4 and Thornburg are GRANTED.

5 The Clerk of the Court is directed to set aside the default of Thornburg Mortgage  
6 Home Loans Inc., TMST Home Loans, Inc. formerly known as Thornburg Mortgage Home  
7 Loans Inc., and Bank of America, N.A.


8 Because defendants are no longer in default, Lee's motions for default judgment are  
9 DENIED WITHOUT PREJUDICE.

10 The proposed motions to dismiss by Bank of America and Thornburg attached to the  
11 motions to set aside, Dkt. Nos. 24-1 at 9-46; 35-1 at 24-52, are deemed filed as of the date  
12 of this order. Lee has until May 14, 2014, to file any response to these motions to dismiss.  
13 Any replies are due by May 21, 2014. The Court will hold a hearing on these motions on  
14 May 28, 2014, at 1:00 p.m. in Courtroom A, 15th Floor, U.S. District Court, 450 Golden  
15 Gate Avenue, San Francisco, California. The hearing on the motions to dismiss filed by  
16 Quality, Dkt. No. 8, and by MERS, SPS, and U.S. Bank, Dkt. No. 14, is continued from  
17 May 14 to May 28 at 1:00 p.m.

18 By May 7, 2014, Thornburg must file a further brief addressing the issue of whether a  
19 stay of this case as to that defendant is required or appropriate due to the pending  
20 bankruptcy. Any other party may file a response to Thornburg's brief within 7 days of its  
21 filing. The Court will address this issue at the hearing on the motions to dismiss.

22 IT IS SO ORDERED.

23 Date: April 29, 2014

24   
Nathanael M. Cousins  
United States Magistrate Judge