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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

AUTOOPT NETWORKS, INC.,
Plaintiff,
v.
GNANENTHIRAN JAYANTHAN,
Defendant.

Case No.17-cv-04714-HSG

**ORDER SETTING ASIDE ENTRY OF
DEFAULT**

United States District Court
Northern District of California

On May 2, 2018, the Clerk entered Plaintiff AutoOpt Networks, Inc.’s default as to Defendant Gnanenthiran Jayanthan’s counter-complaint. Dkt. No. 74; see also Dkt. No. 12 (counter-complaint). On June 11, 2018, Plaintiff filed a motion erroneously styled as a motion to vacate the default judgment. See Dkt. No. 79. The Court has not entered a default judgment in this case, but it is clear that Plaintiff seeks for the Court to set aside the May 2 entry of default, even though his motion repeatedly conflates the two concepts. See *Mohanna v. Bank of Am., N.A.*, No. 16-cv-01033-HSG, 2017 WL 976015, at *2 (N.D. Cal. Mar. 14, 2017) (“When a party has failed to plead or defend against a complaint, the clerk ‘must enter the party’s default.’ Following an entry of default, the Court may enter a default judgment upon request.”) (citing Fed. R. Civ. P. 55(a), (b)(2)).

Defendant, for his part, correctly notes that there is no default judgment in this case, Dkt. No. 80 at 1, but incorrectly contends that there is also no entry of default, *id.* at 3. He further argues that “[t]o grant [Plaintiff’s] requested relief would be futile and nonsensical,” and “[t]o grant any other relief would be a violation of [Defendant’s] due process rights.” *Id.* at 1. While the Court agrees that it cannot grant Plaintiff’s motion to set aside a non-existent default judgment, it can sua sponte set aside the Clerk’s entry of default as to Defendant’s counterclaims, given that

1 this is obviously the relief sought. See *Lemieux v. Lender Processing Ctr.*, No. 16-cv-01850-BAS-
2 DHB, 2018 WL 637945, at *4 (S.D. Cal. Jan. 31, 2018) (citation omitted). The Court finds that
3 doing so is appropriate here, and finds Defendant’s “due process” argument meritless.

4 Federal Rule of Civil Procedure 55(c) permits a court to “set aside an entry of default for
5 good cause.” Courts in this Circuit look to three factors in determining whether good cause exists:
6 “(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense,
7 and (3) whether culpable conduct of the defendant led to the default.” *Brandt v. Am. Bankers Ins.*
8 *Co. of Fla.*, 653 F.3d 1108, 1111 (9th Cir. 2011) (quoting *Falk v. Allen*, 739 F.2d 461, 463 (9th
9 Cir. 1984)). This determination is within the court’s discretion, which is “especially broad where
10 . . . it is entry of default that is being set aside, rather than a default judgment.” *O’Connor v. State*
11 *of Nev.*, 27 F.3d 357, 364 (9th Cir. 1994) (citation omitted). “Where . . . the movant has a
12 meritorious defense, doubt, if any, should be resolved in favor of the motion to set aside the
13 default so that cases may be decided on their merits.” *Id.* (citation omitted).

14 Applying the Falk factors, the Court finds good cause to set aside the entry of default.
15 Defendant has made no showing of prejudice, and can still pursue his counterclaims.¹ And, while
16 the lack of motions practice in this case precludes the Court from concluding that Plaintiff has a
17 meritorious defense to the counterclaims, any doubt at this juncture should be resolved in
18 Plaintiff’s favor. See *O’Connor*, 27 F.3d at 364. Last, the Court considers whether Plaintiff’s
19 “culpable conduct” led to the default. See *Brandt*, 653 F.3d at 1111. Even where a party “has
20 received actual or constructive notice of the filing of the action and intentionally failed to answer
21 the complaint,” if he can then “offer a credible, good faith explanation negating any intention to
22 take advantage of the opposing party, interfere with judicial decisionmaking, or otherwise
23 manipulate the legal process, the failure to answer is not necessarily . . . culpable or inexcusable.”
24 See *Investcorp Ret. Specialists, Inc. v. Ohno*, No. C-07-01304 RMW, 2007 WL 2462122, at *3
25 (N.D. Cal. Aug. 28, 2007) (citations and internal quotation marks omitted) (original ellipses).
26 Here, the delay appears to be attributable to the failure of Plaintiff, a corporation, to obtain


27 _____
28 ¹ While Falk directs courts to look to whether plaintiffs will be prejudiced, the Court considers the
prejudice to Defendant because the claim as to which the Clerk entered default is a counter-claim.

1 counsel, which precluded it from appearing in this Court. See *In re Am. W. Airlines*, 40 F.3d 1058,
2 1059 (9th Cir. 1994) (per curiam); Civ. L.R. 3-9(b). That delay, as Plaintiff's president and
3 founder explained in response to the Court's order to show cause, was due to his flying to India on
4 short notice for a family emergency. See Dkt. No. 76. This explanation was satisfactory for
5 purposes of discharging the Court's order to show cause, see Dkt. No. 77, and is satisfactory for
6 purposes of Rule 55(c).

7 Accordingly, the Court sua sponte **SETS ASIDE** the Clerk's entry of default, and
8 **DIRECTS** Plaintiff to answer Defendant's counter-complaint by September 7, 2018. This order
9 terminates Docket Number 79.²

10 **IT IS SO ORDERED.**

11 Dated: 8/31/2018

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14 HAYWOOD S. GILLIAM, JR.
15 United States District Judge
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27 ² To the extent the Court construes Plaintiff's noticed motion as one to set aside the entry of
28 default, it finds that the matter is appropriate for disposition without oral argument and is deemed
submitted. See Civil L.R. 7-1(b). The hearing on Plaintiff's motion set for September 6, 2018 is
accordingly **VACATED**.