

1 \*\*E-Filed 10/9/2009\*\*

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8 **IN THE UNITED STATES DISTRICT COURT**  
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
10 **SAN JOSE DIVISION**

11  
12 J & J SPORTS PRODUCTIONS, INC.,

13 Plaintiff,

14 v.

15 JUAN MANUEL MUNOZ aka JUAN M.  
16 MUNOZ, individually and dba EL RINCON  
TAQUERIA dba EL RINCON TAQUERIA #2,

17 Defendant.

Case Number C 09-1947 JF (RS)

ORDER<sup>1</sup> GRANTING DEFENDANT'S  
MOTION TO SET ASIDE DEFAULT

[re: docket entry nos. 9, 10 ]

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19 On May 4, 2009, Plaintiff J&J Sports Productions, Inc. ("J&J") filed a complaint alleging  
20 the following facts: J&J obtained the exclusive rights to air "Danger Zone: The Oscar De La  
21 Hoya v. Ricardo Mayorga WBC Light Middleweight Championship Fight Program," which was  
22 telecast nationwide on Saturday, May 6, 2006. J&J sublicensed the rights to air the fight to bars,  
23 hotels, and other establishments. Defendant Juan Manuel Munoz ("Munoz") pirated the fight  
24 and aired it at two taquerias that he owns. The complaint asserts claims under the  
25 Communications Act of 1934, The Cable & Television Consumer Protection and Competition  
26 Act of 1992, and California Business & Professions Code § 17200.

27  
28 <sup>1</sup> This disposition is not designated for publication in the official reports.

1 On June 10, 2009, J&J filed a proof of service indicating that service of process was  
2 effected on May 22, 2009. Munoz did not file a responsive pleading within the time provided by  
3 law. On June 16, 2009, J&J obtained a clerk’s entry of default. On June 24, 2009, Munoz filed  
4 the instant motion to set aside default, as well as an answer to the complaint. Munoz submits  
5 several affidavits in support of the following version of events:

6 Munoz was served with the summons and complaint on May 22, 2009, but did not  
7 understand that he was being served with a lawsuit. Munoz notified defense counsel, Renee  
8 Yvonne Gardner (“Gardner”), that he had received a “letter” regarding this case. Gardner asked  
9 Munoz to deliver the letter to her assistant, Mike Wess (“Wess”). Munoz did so, but Wess  
10 placed the document in a file and did not tell Gardner that it had arrived. On June 17, 2009,  
11 Munoz delivered to Wess a “Request to Enter Default” bearing a file stamp indicating that  
12 default had been entered. Wess showed it to Gardner, at which point Gardner first became aware  
13 of the “letter” (the summons and complaint) that Munoz had delivered previously.

14 Gardner immediately called J&J’s counsel, Thomas Riley (“Riley”), but was told that  
15 Riley would not speak with her on the telephone without an appointment. Gardner made an  
16 appointment for June 18, 2009, at which time she asked Riley to set aside the default and permit  
17 Munoz to answer. Riley refused. Gardner filed the instant motion to set aside default shortly  
18 thereafter, on June 24, 2009. The case initially was assigned to Magistrate Judge Seeborg. When  
19 J&J declined to consent to have the case heard by a magistrate judge, the case was transferred to  
20 the undersigned judge.

21 Defendant’s motion is governed by Federal Rule of Civil Procedure 55(c), providing that  
22 “[t]he court may set aside an entry of default for good cause, and it may set aside a default  
23 judgment under Rule 60(b).” A good cause analysis under Rule 55(c) requires consideration of  
24 three factors: (1) whether the defendant engaged in culpable conduct that led to the default; (2)  
25 whether the defendant had a meritorious defense; and (3) whether reopening the default judgment  
26 would prejudice the plaintiff. *Franchise Holding II, LLC. v. Huntington Restaurants Group,*  
27 *Inc.* 375 F.3d 922, 925-926 (9th Cir. 2004). These factors are disjunctive – thus the Court may  
28 deny the motion if any of the three factors exists. *Id.*

1 Clearly, Munoz's failure to file a timely answer was the result of a clerical error on the  
2 part of Gardner's support staff and was not the result of any culpable conduct of Munoz. Munoz  
3 has filed an answer denying that he aired the fight; if proved, this would be a meritorious  
4 defense. The Court fails to perceive how setting aside the default would prejudice J&J given  
5 Gardner's promptness in contacting Riley and filing the instant motion once Gardner became  
6 aware of the entry of default. J&J cites a number of authorities establishing that the Court could  
7 deny the motion in the exercise of its discretion, and the Court agrees that it could do so.  
8 However, based upon the record presented, the Court concludes that good cause exists to set  
9 aside the clerk's entry of default.

10 **ORDER**

- 11 (1) For good cause shown, the Court hereby sets aside the clerk's entry of default  
12 dated June 16, 2009.
- 13 (2) A Case Management Conference is set for December 18, 2009 at 10:30 a.m.
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16 DATED: October 9, 2009

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