

1 F.3d 1494, 1515 (9th Cir. 1996) (citation omitted) (“the interlocutory orders and rulings made pre-
2 trial by a district judge are subject to modification by the district judge at any time prior to final
3 judgment”); Fed. R. Civ. P. 54(b) (a decision that does not dispose of every claim “may be revised
4 at any time before the entry of a judgment”).

5 The court finds that a material difference in law regarding the meritorious nature of
6 Nguyen’s defense exists from that which was presented to the court before its oral ruling.
7 Specifically, in Plaintiff’s papers and at oral argument, Plaintiff argued that good faith is not a
8 defense because 47 U.S.C. §§ 605 and 553 are strict liability offenses. District Courts, however,
9 have reached conflicting conclusions regarding whether strict liability applies to good faith
10 purchases. Compare J & J Sports Prods. Inc. v. Gidha, No. CIV-S-10-2509 KJM-KJN, 2011 WL
11 3439205, at *3 (E.D. Cal. Aug. 4, 2011) (finding defendants could have a meritorious defense
12 where it purchased cable provider improperly billed them for the residential rate instead of the
13 commercial rate) with Joe Hand Promotions, Inc. v. Easterling, No. 4:08 CV 1259, 2009 WL
14 1767579, at *4-5 (N.D. Ohio June 22, 2009) (finding defendant who purchased residential license
15 had no good faith defense to violating §§ 605 and 553). Because the issue appears to not yet be
16 resolved within this Circuit, litigation of Nguyen’s defense may not be a “wholly empty exercise.”
17 TCI Group Life Ins. Plan v. Knoebber, 244 F.3d 691, 700 (9th Cir. 2001). Thus, if Nguyen had
18 moved for leave to file a motion for reconsideration, the court would have granted her leave. See
19 Civil L.R. 7-9(b)(1). It therefore is proper for the court to sua sponte grant Nguyen leave to file a
20 motion for reconsideration. Accordingly,

21 IT IS HEREBY ORDERED that no later than January 27, 2012, Nguyen shall file a motion
22 for reconsideration of the court’s oral ruling denying the motion to set aside the default that
23 specifically addresses whether Nguyen has a meritorious defense. Any opposition brief shall be
24 filed no later than 14 days after the motion is filed. See Civil L.R. 7-3. Any reply brief shall be
25 filed no later than 7 days after the opposition is filed. See id. Oral argument on the motion for
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28 Case No.: 5:10-CV-05722 EJD
ORDER SUA SPONTE GRANTING LEAVE TO FILE MOTION FOR RECONSIDERATION
OF THE COURT’S ORAL RULING DENYING DEFENDANT’S MOTION TO SET ASIDE
DEFAULT

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reconsideration will be heard on March 9, 2012 at 9 a.m.

Dated: January 3, 2012



EDWARD J. DAVILA
United States District Judge