



1 On December 7, 2010, Defendant Hilway filed a motion to set aside default. (Doc. No. 21.)  
2 On December 8, 2010, the Court ordered that the motion to set aside default be treated as  
3 Defendant's opposition to the motion for default judgment and set a hearing on both the  
4 motion to set aside default and motion for default judgment for December 13, 2010. (Doc. No.  
5 22.) On December 10, 2010, Plaintiff ADT filed its response in opposition to the motion to  
6 set aside default. (Doc. No. 23.) The Court held a hearing on the matter on December 13,  
7 2010. Jeff Goldman appeared on behalf of Plaintiff ADT. Samy Henein appeared  
8 telephonically on behalf of Defendant Hilway.

9 Under Federal Rule of Civil Procedure 55(c), a court may set aside a default for "good  
10 cause." To determine whether good cause exists, courts should consider three factors:  
11 "whether the defendant's culpable conduct led to the default; whether the defendant has a  
12 meritorious defense; and whether reopening the default judgment would prejudice the  
13 plaintiff." TCI Group Life Ins. Plan v. Knoebber, 244 F.3d 691, 696 (9th Cir. 2001) (citing  
14 Falk v. Allen, 739 F.2d 461, 463 (9th Cir. 1984)); Franchise Holding II, LLC. v. Huntington  
15 Restaurants Group, Inc., 375 F.3d 922, 925-26 (9th Cir. 2004). "The court's discretion is  
16 especially broad where, as here, it is entry of default that is being set aside, rather than a  
17 default judgment." O'Connor v. Nevada, 27 F.3d 357, 364 (9th Cir. 1994) (citation and  
18 quotation marks omitted).

19 Hilway contends that his default was the result of mistake and that it should be set aside  
20 based upon a finding of excusable neglect and lack of prejudice. (Doc. No. 21.) Exercising  
21 its discretion and considering the arguments and evidence presented by the parties, the Court  
22 concludes that setting aside the default against Defendant Hilway is appropriate. Accordingly,  
23 the Court GRANTS Defendant Hilway's motion to set aside default and the Court DENIES  
24 Plaintiff ADT's motion for default judgment without prejudice. Defendant Hilway is directed

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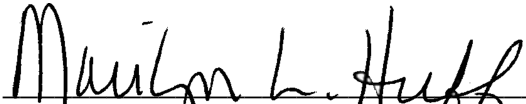
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1 to answer or otherwise respond to the complaint on or before December 15, 2010. The Court's  
2 November 8, 2010 preliminary injunction order remains in effect against Defendant Hilway.

3 **IT IS SO ORDERED.**

4 DATED: December 13, 2010

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6 MARILYN L. HUFF, District Judge  
7 UNITED STATES DISTRICT COURT

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