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5 UNITED STATES DISTRICT COURT
6 SOUTHERN DISTRICT OF CALIFORNIA
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8 JAMES WARYCK and SANGAM
9 SHETH,

10 Plaintiffs,

11 v.

12 THOR MOTOR COACH, INC., MIKE
13 THOMPSON RECREATIONAL
14 VEHICLES, SANTA FE SPRINGS,
15 RELIABLE DELIVERY SERVICES,
16 INC., and DOES 1–20,

Defendants.

Case No.: 22-cv-1096-L-MDD

**ORDER GRANTING MOTION TO
SET ASIDE DEFAULT**

[ECF No. 12]

17 Pending before the Court is Defendant Reliable Delivery Services, Inc.’s
18 (“Reliable Delivery”) motion to set aside entry of default pursuant to Federal Rule of
19 Civil Procedure 55(c). (ECF No. 12.) The motion is unopposed. (See ECF No. 22.) The
20 Court decides the matter on the papers submitted and without oral argument. See Civ.
21 L.R. 7.1. For the reasons stated below, the Court **GRANTS** the motion.

22 **I. BACKGROUND**

23 Plaintiffs filed a complaint on July 27, 2022, asserting five causes of action
24 including a claim for professional negligence against Reliable Delivery. (ECF No. 1.)
25 When Reliable Delivery failed to respond to the complaint, Plaintiffs filed a motion for
26 entry of default on September 7, 2022. (ECF No. 9.) The clerk of the court entered
27 default as to Reliable Delivery two days later. (ECF No. 9.) On September 20, 2022,
28 Reliable Delivery filed the present motion to set aside the entry of default. (ECF No. 12.)

1 **II. LEGAL STANDARD**

2 Federal Rule of Civil Procedure 55 provides that “[t]he court may set aside an
3 entry of default for good cause.” Fed. R. Civ. P. 55(c). In assessing good cause, the
4 court considers three factors: “(1) whether [the defendant] engaged in culpable conduct
5 that led to the default; (2) whether [the defendant] had a meritorious defense; or (3)
6 whether reopening the default judgment would prejudice [the plaintiff].” *Franchise*
7 *Holding II, LLC. v. Huntington Restaurants Grp., Inc.*, 375 F.3d 922, 926 (9th Cir. 2004).
8 “As these factors are disjunctive, the district court [is] free to deny the motion ‘if any of
9 the three factors [is] true.’” *Id.* (quoting *Am. Ass'n of Naturopathic Physicians v.*
10 *Hayhurst*, 227 F.3d 1104, 1108 (9th Cir. 2000)). The movant bears “the burden of
11 showing that any of these factors favor[s] setting aside the default.” *Id.*

12 **III. DISCUSSION**

13 The Court addresses each “good cause” factor in turn.

14 **A. Culpability**

15 For purposes of Rule 55, “[a] defendant's conduct is culpable if he has received
16 actual or constructive notice of the filing of the action and *intentionally* failed to answer.”
17 *United States v. Signed Pers. Check No. 730 of Yubran S. Mesle*, 615 F.3d 1085, 1092
18 (9th Cir. 2010) (quoting *TCI Grp. Life Ins. Plan v. Knoebber*, 244 F.3d 691, 697 (9th Cir.
19 2001)). But this requirement demands more than the movant “simply . . . having made a
20 conscious choice not to answer.” *Id.* “[T]he movant must have acted with bad faith, such
21 as an ‘intention to take advantage of the opposing party, interfere with judicial decision
22 making, or otherwise manipulate the legal process.’” *Id.* (quoting *TCI Grp.*, 244 F.3d at
23 697).

24 The Court finds no bad faith or culpable conduct in Reliable Delivery’s failure to
25 respond to the complaint. Reliable Delivery’s counsel submitted a declaration explaining
26 that he was erroneously informed that service of the complaint was effectuated August
27 23, 2022, when in fact service was effectuated on July 28, 2022. (ECF No. 12-2, at 1–2.)
28 Attached to the declaration is ample evidence that upon learning of the motion for entry

1 of default, Reliable Delivery’s counsel acted promptly to resolve the issues with
2 Plaintiffs’ counsel. (*See* ECF No. 12-3.) The circumstances simply do not suggest bad
3 faith rather than mistake or inadvertence. Therefore, this factor favors setting aside the
4 entry of default.

5 **B. Meritorious Defense**

6 “All that is necessary to satisfy the ‘meritorious defense’ requirement is to allege
7 sufficient facts that, if true, would constitute a defense.” *Mesle*, 615 F.3d at 1094.
8 “[T]he question whether the factual allegation is true’ is not to be determined by the
9 court when it decides the motion to set aside the default” as that question is more
10 appropriately “the subject of later litigation.” *Id.* (quoting *TCI Grp.*, 244 F.3d at 700).
11 The Court notes that meeting the meritorious defense requirement is not an
12 “extraordinarily heavy” burden. *Id.*

13 Reliable Delivery argues that it has several meritorious defenses going to the heart
14 of this case, including but not limited to, disputing the nature of any property damage to
15 the subject vehicle. (ECF NO. 12-1, at 5.) Reliable Delivery also asserts that it would
16 prevail on a motion to strike civil penalty and punitive damages as the claims against it
17 do not suggest oppressive, fraudulent, and malicious conduct. (*Id.* at 5–6.) Reliable
18 Delivery further alleges that this Court lacks subject matter jurisdiction and thus it would
19 prevail on a motion to dismiss. (*Id.* at 6.)

20 Reliable Delivery has sufficiently alleged facts that, if true, would constitute a
21 defense. Moreover, in light of the general rule that “[c]ases should be decided upon their
22 merits whenever reasonably possible,” *Eitel v. McCool*, 782 F.2d 1470, 1472 (9th Cir.
23 1986), the Court finds that this factor weighs in favor of setting aside default.

24 **C. Prejudice**

25 Setting aside an entry of default “must result in greater harm than simply delaying
26 resolution of the case” to be considered prejudicial. *Mesle*, 615 F.3d 1095 (quoting *TCI*
27 *Grp.*, 244 F.3d at 701). Rather, “[t]he standard is whether [the plaintiff’s] ability to
28 pursue his claim will be hindered.” *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

1 The Court finds that Plaintiffs will not be prejudiced by setting aside the entry of
2 default. There is nothing to suggest that Plaintiffs' ability to pursue their claims would be
3 hindered by setting aside the entry of default, especially at this early stage of litigation
4 before discovery has taken place. Accordingly, the Court finds that this factor, like the
5 other factors considered, weighs in favor of setting aside default.

6 **IV. CONCLUSION**

7 For the reasons stated above, Reliable Delivery's motion to set aside default is
8 **GRANTED.**

9 **IT IS SO ORDERED.**

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11 Dated: January 18, 2023

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13 Hon. M. James Lorenz
14 United States District Judge
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