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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

SCOTTSDALE INSURANCE COMPANY,  
  
Plaintiff,  
  
v.  
  
STEVEN HAMERSLAG and PERSPECTIUM CORP.,  
  
Defendants.

Case No.: 23-CV-780 JLS (AHG)  
  
**ORDER GRANTING IN PART AND DENYING IN PART, PURSUANT TO CIVIL LOCAL RULE 7.1(f)(3)(c), PERSPECTIUM CORPORATION’S MOTION TO SET ASIDE ENTRY OF DEFAULT OR, ALTERNATIVELY, MOTION TO DISMISS**  
  
(ECF Nos. 4, 7, 8)

Presently before the Court is Defendant Perspectium Corporation’s (“Perspectium”) Motion to Set Aside Entry of Default or, Alternatively, Motion to Dismiss (“Mot.,” ECF No. 8). Plaintiff Scottsdale Insurance Company did not file a response to the Motion. *See generally* Docket. On August 4, 2023, the Court took the Motion under submission without oral argument pursuant to Civil Local Rule 7.1(d)(1). *See* ECF No. 12. Having carefully considered Perspectium’s arguments and the applicable law, the Court **GRANTS IN PART AND DENIES IN PART** Perspectium’s Motion.

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## BACKGROUND

1  
2 The instant litigation arises out of an insurance dispute. Plaintiff alleges that it issued  
3 an insurance policy in which it agreed to provide coverage for claims brought against either  
4 Perspectium or Perspectium’s officers and directors. ECF No. 1 ¶¶ 1, 17 (the “Compl.”).  
5 According to Plaintiff, Defendant Steven Hamerslag (“Hamerslag”) is the subject of a  
6 separate lawsuit (the “Hamerslag Lawsuit”) stemming from conduct Hamerslag engaged  
7 in during his service as a director of Perspectium. *Id.* ¶¶ 22–29. Plaintiff seeks a  
8 declaratory judgment stating that it has no duty to defend or indemnify either Hamerslag  
9 or Perspectium in connection with the Hamerslag Lawsuit. *Id.* ¶ 5.

10 According to facts alleged in the Hamerslag Lawsuit, Perspectium merged with  
11 another company—BitTitan, Inc. (“BitTitan”)—at the direction of Hamerslag, who was an  
12 investor in and director of both Perspectium and BitTitan. *Id.* ¶¶ 24–27. After the merger,  
13 a third company—Idera, Inc. (“Idera”)—acquired BitTitan. *Id.* ¶ 27. The plaintiffs in the  
14 Hamerslag Lawsuit—the founder of Perspectium, his spouse, and his family trust, *id.* ¶ 2—  
15 allege that Hamerslag breached his fiduciary duties to Perspectium and its shareholders  
16 through his actions relating to the merger and sale, *id.* ¶¶ 28–29.

17 Hamerslag sought coverage from Plaintiff regarding the Hamerslag Lawsuit, which  
18 Plaintiff denied by letter. *Id.* ¶¶ 30–31. Plaintiff informed Hamerslag that the policy’s  
19 “Insured vs. Insured Exclusion” applies to the Hamerslag Lawsuit. *Id.* ¶ 31. This  
20 Exclusion provides—subject to certain exceptions, *see id.* ¶ 40—as follows:

21 **Insurer** shall not be liable for **Loss** under this Coverage Section on  
22 account of any **Claim** . . . brought or maintained by, on behalf of, in the  
23 right of, or at the direction of any **Insured** in any capacity, any **Outside**  
24 **Entity** or any person or entity that is an owner of or joint venture  
25 participant in any **Subsidiary** in any respect and whether or not  
collusive[.]

26 *Id.* ¶ 21 (alterations in original). Plaintiff alleges that Perspectium’s founder, as a former  
27 director and officer of Perspectium, is an “Insured” under the policy, as is his spouse. *Id.*  
28 ¶¶ 36–37. So, per Plaintiff, the Hamerslag Lawsuit constitutes a claim “brought or

1 maintained by, on behalf of, in the right of, or at the direction of any Insured in any  
2 capacity.” *Id.* ¶ 39.

3 On April 27, 2023, Plaintiff filed the instant lawsuit seeking declaratory relief. *See*  
4 Docket. Plaintiff indicated that “[u]pon information and belief, Perspectium is a defunct  
5 California corporation with its principal place of business in Texas.” Compl. ¶ 8. The  
6 Court issued a summons the same day, *see* ECF No. 3, and Plaintiff filed proof of service  
7 with respect to Perspectium on May 22, 2023, *see* ECF No. 4. Plaintiff’s process server  
8 indicates that he personally served “CSC-Lawyers Incorporating Service, agent for service  
9 of process, by serving Koy Saechao, Intake Specialist/Authorized to Accept Service of  
10 Process” at “2710 Gateway Oaks Drive, Suite 150N, Sacramento, CA 95833.” ECF No.  
11 4-1 at 2 (capitalization altered). Plaintiff then asked the Clerk to enter default as to  
12 Perspectium on June 27, 2023. *See* ECF No. 6. The Clerk entered default as to Perspectium  
13 the following day. *See* ECF No. 7 (the “Entry of Default”).

14 On July 7, 2023, Perspectium filed the instant Motion, accompanied by the  
15 Declaration of Joseph Horzepa (“Horzepa Decl.,” ECF No. 8-2). Horzepa states that he  
16 serves as General Counsel for Idera and its subsidiaries, including BitTitan and  
17 Perspectium. Horzepa Decl. ¶ 1. According to Horzepa, after Idera acquired BitTitan and  
18 Perspectium, Idera converted Perspectium into a Delaware corporation in February of  
19 2022. *Id.* ¶ 2. This conversion purportedly terminated Perspectium’s corporate existence  
20 in California. *Id.* The newly-reformed Perspectium then named “Corporation Service  
21 Company, 251 Little Falls Drive, Wilmington, Delaware, 19808” as its registered agent for  
22 service of process. *Id.* Perspectium did not name a registered agent in California post-  
23 conversion. *Id.*

24 Perspectium concedes that Koy Saechao and his employer CSC were “agents  
25 authorized to receive service for Perspectium . . . at one time,” *i.e.*, when Perspectium was  
26 incorporated in California. Mot. at 17; *see also* ECF No. 8-4 at 1 (listing “1505 Corporation  
27 CSC - Lawyers Incorporating Service” as Perspectium’s agent and Koy Saechao as a “CA  
28 Registered Corporate (1505) Agent Authorized Employee[ ]”). But post-conversion,

1 Perspectium argues, “CSC and Koy Saechao were no longer and could not be legally  
2 authorized agents for Perspectium.” Mot. at 17.

3 As Plaintiff served Koy Saechao after Perspectium’s alleged conversion took place,  
4 *see* ECF No. 4, Perspectium requests that the Court dismiss Plaintiff’s Complaint for  
5 defective service pursuant to Rule 12(b)(5) and set aside the Clerk’s Entry of Default on  
6 that same basis, Mot. at 17–18. In the alternative, Perspectium asks this Court to set aside  
7 the Clerk’s Entry of Default for good cause shown, pointing out that it did not receive  
8 actual notice of the lawsuit until after the Clerk entered default. *Id.* at 10–14.

### 9 LEGAL STANDARDS

#### 10 I. Local Rule 7.1(f)(3)(c)

11 Civil Local Rule 7.1(e)(2) requires the party against whom a motion is filed to file  
12 an opposition or statement of non-opposition no later than fourteen days prior to the  
13 motion’s noticed hearing. Under Civil Local Rule 7.1(f)(3)(c), “[i]f an opposing party fails  
14 to file the papers in the manner required by Civil Local Rule 7.1.e.2, that failure may  
15 constitute a consent to the granting of a motion or other request for ruling by the court.”

16 Courts regularly apply Civil Local Rule 7.1(f)(3)(c) to summarily grant unopposed  
17 motions. *See United States v. Warren*, 601 F.2d 471, 473 (9th Cir. 1979) (per curiam); *see*  
18 *also, e.g., Park v. Washington Mut. Bank*, No. 10 CV 1548 MMA AJB, 2010 WL 4235475,  
19 at \*1 (S.D. Cal. Oct. 21, 2010) (summarily granting a motion to quash service under Rule  
20 12(b)(5)); *Anderson v. Does 1-6*, No. 18CV2137-JAH (WVG), 2019 WL 1017611, at \*1  
21 (S.D. Cal. Mar. 4, 2019) (summarily granting a motion to dismiss); *Holandez v. Ent., LLC*,  
22 No. EDCV211755JGBSHKX, 2023 WL 2559209, at \*3–4 (C.D. Cal. Jan. 5, 2023)  
23 (summarily granting, under a similar local rule, a motion for conditional certification of a  
24 collective action).

25 Courts do so with good reason. “[Civil Local Rule 7.1(f)(3)(c)] is designed to relieve  
26 the court of the burden of reviewing the merits of a motion without the benefit of full  
27 briefing, because such a review requires a significant amount of scarce judicial time.” *Luna*  
28 *v. U.S. Bank, N.A.*, No. 09-CV-2807-L NLS, 2011 WL 1099795, at \*1 (S.D. Cal. Mar. 24,

1 2011). Moreover, by empowering district courts to decline to rule “upon issues which  
2 remain unfocused” and which lack “that clear concreteness” provided by the “clash of  
3 adversary argument exploring every aspect of a multifaceted situation embracing  
4 conflicting and demanding interests,” Civil Local Rule 7.1(f)(3)(c) serves the same goals  
5 that underlie prudential restrictions on federal courts’ issuance of advisory opinions. *See*  
6 *United States v. Fruehauf*, 365 U.S. 146, 157 (1961); *United States v. Windsor*, 570 U.S.  
7 744, 759–60 (2013).

8 A district court’s exercise of discretion pursuant to Civil Local Rule 7.1(f)(3)(c) is  
9 informed by the factors outlined in *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (per  
10 curiam). These factors include “(1) the public’s interest in expeditious resolution of  
11 litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the  
12 defendants; (4) the public policy favoring disposition of cases o[n] their merits; and (5) the  
13 availability of less drastic sanctions.” *Id.* (quoting *Henderson v. Duncan*, 779 F.2d 1421,  
14 1423 (9th Cir.1986)).

## 15 **II. Rule 12(b)(5)**

16 A district court cannot exercise jurisdiction over a defendant without proper service  
17 of process. *Omni Cap. Int’l, Ltd. v. Rudolf Wolff & Co.*, 484 U.S. 97, 104 (1987); *S.E.C.*  
18 *v. Ross*, 504 F.3d 1130, 1138–39 (9th Cir. 2007). Federal Rule of Civil Procedure 12(b)(5)  
19 thus authorizes a defendant to raise by motion the defense of “insufficient service of  
20 process.” Once a defendant challenges service, the plaintiff bears the burden of  
21 establishing valid service pursuant to Federal Rule of Civil Procedure 4. *Brockmeyer v.*  
22 *May*, 383 F.3d 798, 801 (9th Cir. 2004).

23 If the plaintiff is unable to satisfy its burden of demonstrating effective service, a  
24 court may either dismiss the action or quash service and allow the plaintiff to serve the  
25 defendant again. *Stevens v. Sec. Pac. Nat’l Bank*, 538 F.2d 1387, 1389 (9th Cir. 1976).  
26 “Where it appears that effective service can be made and there is no unfair prejudice to the  
27 defendant, quashing service rather than dismissing the action, and leaving the plaintiff free  
28 to effect proper service, is the appropriate course.” *Wick Towing, Inc. v. Northland, No.*

1 C15-1864JLR, 2016 WL 3461587, at \*2 (W.D. Wash. June 21, 2016) (citing  
2 *Umbenhauer v. Woog*, 969 F.2d 25, 30 (3d Cir. 1992)).

### 3 **III. Motion to Set Aside Default**

4 Pursuant to Federal Rule of Civil Procedure 55(c), “[t]he court may set aside an entry  
5 of default for good cause.” Courts have broad discretion in deciding whether to vacate an  
6 entry of default. *See Mendoza v. Wight Vineyard Mgmt.*, 783 F.2d 941, 945 (9th Cir. 1986)  
7 (per curiam). It is the defendant’s burden to establish that good cause to vacate the entry  
8 of default exists. *TCI Grp. Life Ins. Plan v. Knoebber*, 244 F.3d 691, 696 (9th Cir. 2001),  
9 *overruled on other grounds by Egelhoff v. Egelhoff ex rel. Breiner*, 532 U.S. 141 (2001).

10 The Ninth Circuit has held that “[t]he ‘good cause’ standard that governs vacating  
11 an entry of default under Rule 55(c) is the same standard that governs vacating a default  
12 judgment under Rule 60(b).” *Franchise Holding II, LLC v. Huntington Rests. Grp., Inc.*,  
13 375 F.3d 922, 925 (9th Cir. 2004). Thus, in assessing good cause, a district court considers  
14 three factors:

15 (1) whether [the defendant] engaged in culpable conduct that led  
16 to the default; (2) whether [the defendant] had a meritorious  
17 defense; or (3) whether reopening the default judgment would  
18 prejudice [the plaintiff]. As these factors are disjunctive, the  
19 district court [is] free to deny the motion “if any of the three  
factors [are] true.”

20 *Id.* at 926 (quoting *Am. Ass’n of Naturopathic Physicians v. Hayhurst*, 227 F.3d 1104, 1008  
21 (9th Cir. 2000)).

22 Courts “should apply the[se] factors more liberally” when assessing a motion to set  
23 aside an entry of default rather than a default judgment. *Page v. Banks*, No.  
24 07CV2254JM(BLM), 2008 WL 2037763, at \*2 (S.D. Cal. May 12, 2008) (citing *Haw.*  
25 *Carpenters’ Tr. Funds v. Stone*, 794 F.2d 508, 513 (9th Cir. 1986)). Ultimately, there is a  
26 strong preference for deciding cases on their merits, and therefore any doubts should be  
27 resolved in favor of setting aside the default. *Direct Mail Specialists, Inc. v. Eclat*  
28 *Computerized Techs., Inc.*, 840 F.2d 685, 690 (9th Cir. 1988).

1 ANALYSIS

2 Perspectium’s Motion was set for hearing on August 10, 2023. *See* Mot. at 1. Civil  
3 Local Rule 7.1(e)(2) therefore required Plaintiff to respond by July 27, 2023. Yet  
4 Plaintiff—who is represented by counsel—filed no response to the Motion, even when the  
5 Court took the Motion under submission on August 4, 2023. *See* ECF No. 12; Docket.  
6 Plaintiff has continued to submit filings in this matter, *see* ECF No. 13, but has offered no  
7 excuse for its failure to oppose Perspectium’s Motion, *see generally* Docket. As Plaintiff  
8 did not respond within the time set by Civil Local Rule 7.1(e)(2), the Court proceeds to its  
9 analysis of whether the *Ghazali* factors support granting Perspectium’s Motion pursuant to  
10 Civil Local Rule 7.1(f)(3)(c).

11 The public’s interest in the expeditious resolution of litigation, the Court’s need to  
12 manage its docket, and the public policy favoring disposition of cases on their merits weigh  
13 in Perspectium’s favor. Ruling on the Motion without the benefit of Plaintiff’s  
14 arguments—or, in the alternative, delaying resolution of this Motion still further by  
15 ordering Plaintiff to respond—will waste valuable judicial time and delay the ultimate  
16 resolution of this case. *See Luna*, 2011 WL 1099795, at \*1. Relatedly, maintaining the  
17 status quo—the Clerk’s Entry of Default—will not help this case progress toward an  
18 ultimate disposition on the merits. *See Direct Mail Specialists*, 840 F.2d at 690; *Park*, 2010  
19 WL 4235475, at \*1.

20 Further, because the Court elects a less drastic sanction than dismissal of this action,  
21 the availability of less drastic sanctions does not weigh in Plaintiff’s favor. The Court  
22 could—as Perspectium requests, Mot. at 17—exercise its discretion to dismiss this entire  
23 action, *see Bovier v. Bridgepoint Educ./Ashford Univ.*, No. 317CV01052GPCJMA, 2018  
24 WL 1010503, at \*2 (S.D. Cal. Feb. 22, 2018). But Perspectium’s Motion offers no  
25 evidence suggesting either (1) that Plaintiff will be unable to properly serve Perspectium  
26 or (2) that Perspectium will suffer prejudice if this Court declines to dismiss the action.  
27 *See Pathak v. Omaha Steaks Int’l, Inc.*, No. 10-7054 RSWL RZX, 2011 WL 1152656, at  
28 \*2 (C.D. Cal. Mar. 28, 2011). Hence, the Court will instead quash Plaintiff’s previous

1 attempt at service and order Plaintiff to re-serve Perspectium. *See id.*; Fed. R. Civ. P. 4(m)  
2 (noting that where a plaintiff has not served a defendant within 90 days, a court may “order  
3 that service be made within a specified time”).

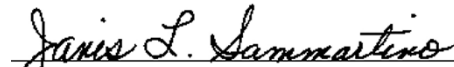
4 The balance of the *Ghazali* factors weighs in favor of setting aside the Clerk’s Entry  
5 of Default and ordering Plaintiff to re-effect service on Perspectium pursuant to Civil Local  
6 Rule 7.1(f)(3)(c). As such, the Court has the option of granting Perspectium’s Motion  
7 based on Plaintiff’s failure to respond, and it chooses to do so.

8 **CONCLUSION**

9 In light of the foregoing, the Court **GRANTS IN PART AND DENIES IN PART**  
10 Perspectium’s Motion to Set Aside Default or, Alternatively, Motion to Dismiss (ECF  
11 No. 8). The Court **VACATES** the Clerk’s Entry of Default as to Perspectium (ECF No. 7)  
12 and **QUASHES** Plaintiff’s attempted service on Perspectium (ECF No. 4). The Court  
13 **GRANTS** Plaintiff thirty (30) days from the electronic filing date of this Order to serve  
14 Perspectium in accordance with applicable federal or state law. The Court otherwise  
15 **DENIES** Perspectium’s Motion.

16 **IT IS SO ORDERED.**

17 Dated: November 8, 2023

  
18 Hon. Janis L. Sammartino  
19 United States District Judge  
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