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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

MEDERICK LEE, et al., Plaintiff(s), v. UNIVERSITY MEDICAL CENTER OF SOUTHERN NEVADA, Defendant(s).	2:14-CV-328 JCM (CWH)
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ORDER

Presently before the court is defendant University Medical Center of Southern Nevada's motion to set aside clerk's entry of default. (Doc. # 10). Plaintiffs have filed a response in opposition, (doc. # 15), and defendant filed a reply, (doc. # 16).

I. Background

Plaintiffs filed a complaint against defendant on March 3, 2014. (Doc. # 1). Plaintiffs properly served the defendant on March 20, 2014. (Doc. # 6). Pursuant to Federal Rule of Civil Procedure 12(a), a defendant is allotted twenty-one days to file an answer or responsive pleading.

Defendant did not file an answer or responsive pleading within twenty-one days of being served with the complaint. As a result, plaintiffs filed a motion for the entry of clerk's default. (Doc. # 7). The clerk subsequently entered default against defendant. (Doc. # 9). Six days after the entry of clerk's default, defendant filed the instant motion. (Doc. # 10).

...

1 **II. Legal Standard**

2 Federal Rule of Civil Procedure 55(c) states, “The court may set aside an entry of default for
3 good cause” To determine if good cause exists, the court considers: “(1) whether the party
4 seeking to set aside the default engaged in culpable conduct that led to the default; (2) whether it had
5 no meritorious defense; or (3) whether reopening the default judgment would prejudice the other
6 party.” *United States v. Signed Personal Check No. 730 of Yubran S. Mesle*, 615 F.3d 1085, 1091
7 (9th Cir. 2010) (internal quotations omitted). “[J]udgment by default is a drastic step appropriate
8 only in extreme circumstances; a case should, whenever possible, be decided on the merits.” *Id.*

9 While the court considers the same factors prior to vacating an entry of default as it would
10 a default judgment, the test is less stringent when a default judgment has not been entered. *See*
11 *Hawaii Carpenters' Trust Funds v. Stone*, 794 F.2d 508, 513 (9th Cir. 1986). Indeed, “[t]he court’s
12 discretion is especially broad where . . . it is entry of default that is being set aside, rather than a
13 default judgment.” *Mendoza v. Wight Vineyard Mgmt.*, 783 F.2d 941, 945 (9th Cir. 1986).

14 **III. Discussion**

15 The court will address each of the three factors in turn.

16 *A. Culpable Conduct*

17 “A defendant’s conduct is culpable if he has received actual or constructive notice of the
18 filing and *intentionally* failed to answer.” *Mesle*, at 615 F.3d. at 1092. “[T]o treat a failure to answer
19 as culpable, the movant must have acted with bad faith, such as an intention to take advantage of the
20 opposing party, interfere with judicial decisionmaking, or otherwise manipulate the legal process.”
21 *Id.*

22 The court finds that defendant was not culpable, nor did it intentionally fail to answer.
23 Defendant’s counsel admits that due to a calendaring error, he failed to file a responsive pleading
24 prior to the deadline. (Doc. # 10-1, p. 3). Defendant’s counsel made a procedural mistake, which he
25 sought to remedy as soon as it was discovered. The court is not inclined to punish defendant with
26 an adverse judgment due to an error of this degree.

27 . . .

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