



1 default under Rule 55(a). The court may set aside an entry of default for “good cause.” Fed. R.  
2 Civ. P. 55(c); *United States v. Signed Pers. Check No. 730 of Yubran S. Mesle* (“*Mesle*”), 615  
3 F.3d 1085, 1091 (9th Cir. 2010). Good cause is determined by the three “*Falk*” factors: (1)  
4 whether the plaintiff would be prejudiced if the default is set aside, (2) whether the defendant has  
5 a meritorious defense, and (3) whether the defendant engaged in culpable conduct that led to the  
6 default. *Id.*; *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984). It is within the court’s discretion  
7 whether to set aside a default. *Mesle*, 615 F.3d at 1091. A positive determination of any of the  
8 three disjunctive *Falk* factors is sufficient to set aside the clerk’s default. *See Brandt v. American*  
9 *Bankers Ins. Co. of Fla.*, 653 F.3d 1108, 1111 (9th Cir. 2011). The standard conforms with the  
10 Ninth Circuit’s “policy favoring judgements on the merits,” rather than by default. *See e.g.*,  
11 *Mesle*, 615 F.3d at 1091.

12 To satisfy the “not extraordinarily heavy” burden of presenting a meritorious defense, the  
13 defendant seeking to vacate a default must present specific facts that would constitute a defense.  
14 *TCI Grp. Life Ins. Plan v. Knoebber*, 244 F.3d 691, 700 (9th Cir. 2001). There must be some  
15 possibility that the suit would have a different outcome at trial than the result achieved by default.  
16 *Hawaii Carpenters’ Trust Funds v. Stone*, 794 F.2d 508, 513 (9th Cir. 1986).

17 Longvue argues that it has meritorious defenses to Day’s allegations, as set forth in its  
18 answer to the complaint. Day argues that Longvue is required to articulate facts supporting its  
19 contention that it has a meritorious defense. Having reviewed Longvue’s answer, the court finds  
20 that the document raises the possibility of a meritorious defense. The answer raises eight  
21 affirmative defenses, including failure to state a claim, equitable doctrines, waiver and estoppel.  
22 (Ans. (ECF No. 30).) Success on any one of these eight affirmative defenses would result in an  
23 outcome other than default. *See Stone*, 794 F.2d at 513-14. Having satisfied at least one of the  
24 factors, the court need not proceed further to the remaining factors to find the default be set aside.  
25 *See Brandt*, 653 F.3d at 1111. Further, the case is in its early stages and the parties have not yet  
26 commenced discovery. Thus, there is minimal prejudice to Day as a result of setting aside the  
27 clerk’s default.

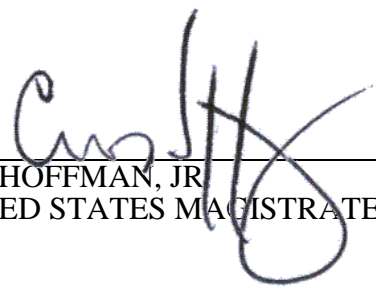
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**III. CONCLUSION**

IT IS THEREFORE ORDERED that defendant's motion to set aside the default (ECF No. 34) is GRANTED.

IT IS FURTHER ORDERED the parties must meet and confer and file a proposed discovery plan and scheduling order within 21 days.

DATED: August 8, 2018

  
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C.W. HOFFMAN, JR.  
UNITED STATES MAGISTRATE JUDGE