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3	UNITED STATES DISTRICT COURT	
4	DISTRICT OF NEVADA	
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6	RANDOLPH DAY,	Case No. 2:17-cv-01596-JAD-CWH
7	Plaintiff,	ORDER
8	v.	ORDER
9	LONGVUE MORTGAGE CAPITAL, INC., et al.,	
10	Defendants.	
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12	Presently before the court is defendant Longvue Mortgage Capital Inc.'s ("Longvue")	
13	motion to set aside default (ECF No. 34), supported by Ramir M. Herndadez's declaration (ECF	
14	No. 35), filed on February 5, 2018. Plaintiff Randolph Day filed a response (ECF Nos. 36, 37) on	
15	February 20, 2018, to which defendant replied (ECF No. 38) on February 27, 2018.	
16	I. BACKGROUND	
17	The court granted three stipulations to extend Longvue's deadline to answer or otherwise	
18	respond to the complaint in this case. (Orders (ECF Nos. 17, 19, 23).) The third order extended	
19	the deadline to answer until August 18, 2017. (Order (ECF No. 23).) Longvue did not file a	
20	responsive pleading, and on October 20, 2017, Day moved for an entry of default. (Mot. for	
21	Entry of Clerk's Default (ECF No. 27).) On October 23, 2017, the clerk entered default against	
22	Longvue. (Clerk's Entry of Default (ECF No. 29).) On the same day, Longvue filed an answer.	
23	(Ans. (ECF No. 30).) Longvue now moves to set aside the clerk's entry of default.	
24	II. DISCUSSION	
25	Rule 55 of the Federal Rules of the Civil Procedure provides a mechanism for obtaining a	
26	default judgment against a party who has failed to plead or otherwise respond to claims brought	
27	against it. Where this failure is "shown by affidavit or otherwise," the clerk must enter a party's	
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default under Rule 55(a). The court may set aside an entry of default for "good cause." Fed. R. 1 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 default. Id.; Falk v. Allen, 739 F.2d 461, 463 (9th Cir. 1984). It is within the court's discretion 6 7 whether to set aside a default. Mesle, 615 F.3d at 1091. A positive determination of any of the three disjunctive Falk factors is sufficient to set aside the clerk's default. See Brandt v. American 8 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.

To satisfy the "not extraordinarily heavy" burden of presenting a meritorious defense, the
defendant seeking to vacate a default must present specific facts that would constitute a defense. *TCI Grp. Life Ins. Plan v. Knoebber*, 244 F.3d 691, 700 (9th Cir. 2001). There must be some
possibility that the suit would have a different outcome at trial than the result achieved by default. *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 factors, the court need not proceed further to the remaining factors to find the default be set aside. 24 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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1	III. CONCLUSION	
2	IT IS THEREFORE ORDERED that defendant's motion to set aside the default (ECF No	
3	34) is GRANTED.	
4	IT IS FURTHER ORDERED the parties must meet and confer and file a proposed	
5	discovery plan and scheduling order within 21 days.	
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7	DATED: August 8, 2018	
8	Chall	
9 10	C.W. HOFFMAN, JR UNITED STATES MACISTRATE JUDGE	
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