

1 **UNITED STATES DISTRICT COURT**
 2 **DISTRICT OF NEVADA**

3 Anthony Ruben Aldo Barbieri,

Case No.: 2:18-cv-00355-JAD-EJY

4 Plaintiff

5 v.

**Order Setting Aside Defaults and
 Directing Answer**

6 Timeshare Liquidators, LLC; Stan Mullis,

[ECF Nos. 22, 31]

7 Defendant

8 Pro se plaintiff Anthony Ruben Aldo Barbieri brings this action against his former
 9 employer and manager for retaliation and hostile work environment. When the defendants failed
 10 to answer or otherwise defend this suit, the Clerk of Court entered default against them.¹

11 Barbieri now moves for a default judgment,² and the defendants countermove to set aside the
 12 default, explaining that they mistakenly believed that their (now-replaced) attorney was actively
 13 defending on their behalf.³ Because I find good cause to set aside the default, I grant the
 14 countermotion, deny Barbieri's motion for default judgment, and permit this case to proceed on
 15 its merits.

16 **Discussion**

17 "Absent an abuse of discretion, there is no error in setting aside a default where the judge
 18 finds good cause to do so."⁴ "The court's discretion is especially broad where, as here, it is entry
 19 of default that is being set aside, rather than a default judgment."⁵ In general, "[w]here timely

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 21 ¹ ECF No. 15.

22 ² ECF No. 22.

23 ³ ECF No. 31.

⁴ *Mendoza v. Wight Vineyard Mgmt.*, 783 F.2d 941, 945 (9th Cir. 1986).

⁵ *O'Connor v. State of Nev.*, 27 F.3d 357, 364 (9th Cir. 1994).

1 relief is sought from a default . . . and the movant has a meritorious defense, doubt, if any, should
2 be resolved in favor of the motion to set aside default so that cases may be decided on the
3 merits.”⁶ In determining whether to set aside a default, the “court should consider whether: (1)
4 the plaintiff would be prejudiced by setting aside the default; (2) the defendant has a meritorious
5 defense; and (3) the defendant’s culpable conduct led to the default.”⁷

6 The set-aside factors weigh in favor of granting Timeshare and Mullis relief from the
7 Clerk’s entry of default. Defendants have established that no true prejudice would befall
8 Barbieri if the default is set aside. They have also demonstrated that they have a meritorious
9 defense by noting that Barbieri’s claims were rejected in state-court-affirmed administrative
10 proceedings before the Nevada Department of Employment Training and Rehabilitation, which
11 found that Barbieri was terminated for misconduct or voluntarily left his position without good
12 cause.⁸ And I cannot conclude that defendants’ culpable conduct led to the default because they
13 reasonably believed that hired counsel was handling their defense, as she provided assurances
14 that she was doing so *and* was actively working on their behalf on other matters where her
15 efforts were successful.⁹ They replaced counsel as soon as they were alerted to her negligence
16 by receiving a copy of Barbieri’s motion for default judgment. As the Ninth Circuit recognized
17 in *Community Dental Services v. Tani*, granting default relief and permitting the case to proceed
18 on its merits “may often constitute the only mechanism for affording a client actual and full relief

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22 ⁶ *Id.*

23 ⁷ *Id.* (citing *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984)).

⁸ ECF No. 31 at 3, ECF No. 31-2 (referee findings).

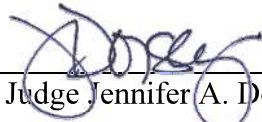
⁹ *See* ECF No. 31-5 at 3 (Mullis declaration).

1 from his counsel's gross negligence"¹⁰ In sum, I find good cause to set aside the Clerk's
2 entry of default and permit this case to proceed on its merits.

3 **Conclusion**

4 Accordingly, IT IS HEREBY ORDERED that the Motion for Default Judgment [ECF
5 No. 22] is DENIED, and the Countermotion to Set Aside Defaults [ECF No. 31] is GRANTED.
6 Defendants have until April 13, 2020, to answer or otherwise respond to the complaint.

7 Dated: April 3, 2020

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U.S. District Judge Jennifer A. Dorsey

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¹⁰ *Community Dental Services v. Tani*, 282 F.3d 1164, 1172 (9th Cir. 2002) (setting aside a default judgment).