

1
2
3
4
5
6
7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 CHARA CURTIS, et al.,

11 Plaintiffs,

12 v.

13 ILLUMINATION ARTS, INC., et al.,

14 Defendants.

CASE NO. C12-0991JLR

ORDER DENYING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

15 **I. INTRODUCTION**

16 Before the court is pro se Defendant Kimmie Thompson's motion for summary
17 judgment. (Mot. (Dkt. # 77).) Ms. Thompson asks the court to release her of any and all
18 liability and dismiss her as a defendant in the case. (*Id.* at 1.) The court has reviewed
19 Ms. Thompson's motion, all submissions filed in support of and in opposition thereto, the
20 balance of the record, and the applicable law. Being fully advised, the court denies Ms.
21 Thompson's motion.
22

II. BACKGROUND

This case has taken a number of turns during its pendency in federal court. The court sets out the factual and procedural background in some detail because it is relevant to its consideration of Ms. Thompson’s motion. On June 8, 2012, Plaintiffs Chara Curtis, Cynthia Aldrich, and Alfred Currier filed a complaint against Defendants Ms. Thompson, John Thompson, Illumination Arts, Inc. (“IAI”), and Illumination Arts Publishing, LLC (“IAP”) for breach of contract and copyright infringement. (*See generally* Compl. (Dkt. # 1).) Plaintiffs allege that they terminated their publishing agreements with Defendants after Defendants stopped paying royalties to Plaintiffs for sales of three inspirational children’s books and after Defendants electronically reproduced and distributed the books without Plaintiffs’ permission. (*See generally id.*)

On July 25, 2012, Defendants appeared through their counsel. (Not. of App. (Dkt. # 12).) On August 7, 2012, Defendants answered the complaint. (Ans. (Dkt. # 13).) On September 13, 2012, the court notified IAI and IAP that they must file a corporate disclosure statement pursuant to Federal Rule of Civil Procedure 7.1. (*See* Dkt. Entry dated Sept. 13, 2012.)

On November 29, 2012, Plaintiffs served Defendants with their first set of discovery requests, which included 19 interrogatories, 68 requests for production of documents, and 43 requests for admission. (*See* 1/31/13 Kruckeberg Decl. (Dkt. # 17) ¶ 2, Ex. A.) After 30 days, Plaintiffs received no response from Defendants. (*Id.* ¶ 3.) On January 2, 2013, counsel for Plaintiffs emailed counsel for Defendants regarding the status of Defendants’ responses. (*Id.*) On January 4, 2013, counsel for

1 Defendants requested an additional 30 days to respond to the discovery requests due to
2 the volume of financial data Plaintiffs requested. (*Id.* ¶ 4.) On January 9, 2013,
3 Plaintiffs’ counsel sent a letter to Defendants’ counsel granting Defendants an additional
4 ten days with respect to the production of financial documents, but demanding immediate
5 responses to the remainder of Plaintiffs’ discovery requests. (*Id.* ¶ 5, Ex. B.) Plaintiffs
6 received no response from Defendants with respect to the January 9, 2013, letter.
7 (*Id.* ¶ 6.)

8 On January 18, 2013, Plaintiffs’ counsel emailed Defendants’ counsel requesting a
9 teleconference with respect to the outstanding discovery requests. (*Id.* ¶ 7.) Counsel for
10 the parties conducted a teleconference on January 22, 2013. (*Id.* ¶ 8.) Counsel for
11 Defendants indicated that Defendants could gather responsive documents by January 31,
12 2013. (*Id.*) As of January 31, 2013, Plaintiffs had received no response or objection to
13 any of the discovery requests at issue. (*Id.* ¶ 12.) On January 31, 2013, Plaintiffs filed
14 their first motion to compel discovery and for sanctions against Defendants. (*See* 1/31/12
15 Mot. (Dkt. # 16).) Defendants filed no response to Plaintiffs’ first motion to compel
16 discovery. (*See generally* Dkt.)

17 On February 20, 2013, the court found that Defendants had waived any objections
18 to Plaintiffs’ discovery requests and ordered Defendants to provide “complete responses
19 without objection” no later than March 1, 2013. (2/20/13 Order (Dkt. # 19) at 6.) The
20 court also order Defendants to pay sanctions to Plaintiffs in the form of reasonable
21 expenses and attorneys’ fees incurred in bringing Plaintiffs’ first motion for sanctions.
22 (*Id.* at 8.) Finally, because IAI and IAP had still not filed their Rule 7.1 corporate

1 disclosure statements, the court again ordered them to do so no later than March 1, 2013.
2 (*Id.* at 6.) The court warned Defendants that should they fail to produce the ordered
3 discovery or provide the required corporate disclosure statements within the stated
4 timeframe, the court would consider imposing additional sanctions. (*Id.* at 7.)

5 Meanwhile, on February 20, 2013, the same day that the court issued its first order
6 regarding discovery and sanctions, Defendants finally served Plaintiffs with their initial
7 responses to Plaintiffs' discovery requests. (6/5/13 Kruckeberg Decl. (Dkt. # 31) Ex. A.)
8 Despite the court's order directing Defendants to provide "complete responses without
9 objection" (2/20/13 Order at 6), Defendants objected to all discovery requests related to
10 Ms. Thompson's finances (6/5/13 Kruckeberg Decl. Ex. A). Between February 27 and
11 29, 2013, Defendants began producing financial records relating to Mr. Thompson, IAI,
12 and IAP. (*Id.* ¶ 6.) However, Defendants produced no information regarding Ms.
13 Thompson's financial records (*id.*), which Plaintiffs asserted they needed to establish
14 their claim that the corporate veil between IAI and IAP, on one hand, and Ms. Thompson,
15 on the other, should be pierced. (*See* 2d Sanc. Mot. (Dkt. # 30) at 4-5.)

16 On March 19, 2013, the court entered an additional order specifying the amount of
17 reasonable expenses and attorneys' fees Defendants were required to pay as sanctions to
18 Plaintiffs pursuant to the court's February 20, 2013, order. (3/19/13 Order (Dkt. # 21) at
19 3.) The court ordered Defendants to pay \$5,594.00 to Plaintiffs within 14 days of the
20 date of the order. (*Id.* at 5.) Despite the court's order, to date, Plaintiffs have not
21 received the court-ordered payment. (3/28/14 Pre-hearing Memo (Dkt. # 84) at 10.)
22

1 The court also noted in its March 19, 2013, order that Defendants had failed to
2 comply with the court's February 20, 2013, order to file their corporate disclosure
3 statements by March 1, 2013. (8/8/13 Kruckeberg Decl. at 3-4.) Accordingly, the court
4 sanctioned IAI and IAP's counsel \$500.00 (representing \$250.00 for each corporate
5 disclosure statement he failed to file), and ordered him to pay the sanctions and to file the
6 required corporate disclosure statements within 14 days. (*Id.* at 5.) Once again, neither
7 IAI, IAP, nor their counsel has complied with the court's order by paying the fine.¹

8 On March 28, 2013, Plaintiffs filed their first motion for partial summary
9 judgment (Dkt. # 22), which the court granted in part and denied in part (5/29/13 Order
10 (Dkt. # 29)). Defendants admitted that "IAI and IAP breached their obligations to pay
11 Plaintiffs' royalties" (4/15/13 Resp. (Dkt. # 25) at 3), and accordingly, the court granted
12 Plaintiffs' motion for summary judgment with respect to IAI's and IAP's liability to
13 Plaintiffs for breach of contract (5/29/13 Order at 10). The court also granted Plaintiffs'
14 motion to disregard the corporate veil between IAI and IAP based on findings that IAP
15 was a mere continuation of IAI and that there had been fraudulent transfers of assets
16 between IAI and IAP. (*Id.* at 10-18.) The court, however, declined to pierce the
17 corporate veil with respect to the Thompsons personally on summary judgment. (*Id.* at
18 18-19.) The court also ruled that Defendants' infringement of Plaintiffs' copyrights was
19 willful, and that the Thompsons were directly liable for the infringement because all
20 Defendants "admitted that they reproduced, distributed and displayed the Books after

21
22 ¹ On June 11, 2013, IAI and IAP filed a corporate disclosure statement. (*See* Dkt. # 35.)

1 | Plaintiffs terminated the publishing agreements and Defendant’s license to do so.” (*Id.* at
2 | 19-20.) Finally, the court granted Plaintiffs’ motion for entry of a permanent injunction
3 | prohibiting any further infringement of Plaintiffs’ copyrights. (*Id.* at 23-24.) As a part of
4 | this order, the court required Defendants to return all infringing copies of the three books
5 | to Plaintiffs. (*Id.* at 24.)

6 | On June 5, 2013, Plaintiffs filed their second motion to compel discovery and for
7 | sanctions. (*See generally* 6/5/13 Mot. (Dkt. # 30).) In addition, Plaintiffs also filed a
8 | second motion for partial summary judgment. (2d SJ Mot. (Dkt. # 32).) On July 18,
9 | 2013, the court ruled on both motions. (*See generally* 7/18/13 Order (Dkt. # 43).) On
10 | Plaintiffs’ second motion to compel and for discovery sanctions, the court found that
11 | Defendants’ failure to comply with the court’s prior discovery order was willful and that
12 | Plaintiffs had suffered prejudice as a result of Defendants’ obstreperous conduct. (*Id.* at
13 | 17-18.) Although Defendants asserted that they should not be sanctioned because
14 | Plaintiffs had ample opportunity to go on-site to review the requested documents, the
15 | court found that Defendants’ offer to Plaintiffs for an on-site review of the documents
16 | was illusory. (*See id.*) Plaintiffs’ counsel had asked about the availability of duplication
17 | services at the private home that served as IAI’s and IAP’s offices and had proposed
18 | sending the documents off-site for duplication. (6/5/13 Kruckeberg Decl. (Dkt. #
19 | 31) ¶ 9.) Defendants’ counsel responded that he would inquire with his clients. (*Id.*)
20 | Despite numerous follow-up inquiries from Plaintiffs’ counsel, Defendants never
21 | provided clarification or indicated that they would agree to having the documents sent
22 | off-site for duplication and they continued to put off arrangements for inspection and

1 copying of the on-site documents. (*Id.* ¶¶ 10-20, Exs. G-N.) By the time that Plaintiffs
2 filed their second motion to compel discovery and for sanctions, they had still not been
3 able to make arrangements to review Defendants' documents on-site. (*See generally*
4 6/5/13 Mot.)

5 Accordingly, the court granted Plaintiffs' request for monetary sanctions in the
6 form of Plaintiffs' reasonable expenses, including attorneys' fees, caused by Defendants'
7 failure to comply with the court's prior discovery order. (7/18/13 Order at 21.) In order
8 to avoid compounding the prejudice to Plaintiffs by forcing them to go to trial on an
9 incomplete record, the court struck the trial date, authorized Plaintiffs to file an additional
10 motion for summary judgment following Defendants' compliance with its order, and
11 stated that the court would reschedule a trial date following consideration of Plaintiffs'
12 motion for summary judgment, if necessary. (*Id.* at 21.) Finally, the court once again
13 ordered Defendants to produce all of the financial records pertaining to Ms. Thompson
14 and the remaining outstanding discovery covered by the court's first discovery and
15 sanctions order no later than August 1, 2013. (*Id.* at 19-20.) The court further ordered
16 Defendants and their counsel to file a certification with the court by the same day stating
17 that they had complied with the court's order. (*Id.*) The court expressly warned
18 Defendants that if they failed to produce the ordered discovery or to file the required
19 certifications with the court within the ordered timeframe, the court would consider
20 additional sanctions including adverse evidentiary findings or the entry of default
21 judgment against Defendants. (*Id.* at 20.)
22

1 In its July 18, 2013, order, the court also granted Plaintiffs' motion for summary
2 judgment with respect to the amount of Mr. Curtis' contract damages, but denied
3 summary judgment with respect to the amount of Ms. Aldrich's and Mr. Currier's
4 contract damages. (*Id.* 9-10.) The court also denied summary judgment with respect to
5 Plaintiffs' request for maximum statutory damages regarding their claim for copyright
6 infringement, ruling that such a request was properly reserved for the jury. (*Id.* at 10-15.)

7 On August 8, 2013, Plaintiffs filed their third motion for sanctions and for partial
8 summary judgment (*see generally* 3d Mot. (Dkt. # 45)), after Defendants ignored the
9 court's July 18, 2013, order directing the production of discovery and the filing of a
10 certification verifying such production (8/8/13 Kruckeberg Decl. (Dkt. # 48) at 2).
11 Plaintiffs again sought partial summary judgment with respect to the amount of Ms.
12 Aldrich's and Mr. Currier's contract damages. (3d. Mot. at 10-12.) Plaintiffs also
13 renewed their motion to pierce the corporate veil between the corporate entities and Mr.
14 Thompson on summary judgment. (*Id.* at 12-13.) In addition, Plaintiffs moved for
15 default judgment against Defendants as a sanction for their failure to respond to the
16 court's July 18, 2013, order by producing the required discovery and certifications. (*Id.*
17 at 8-10.)

18 In response to Plaintiffs' third motion for sanctions and summary judgment, the
19 court pierced the corporate veil between IAI and IAP, on one hand, and Mr. Thompson,
20 on the other. (11/21/13 Order (Dkt. # 55) at 16-24.) Although both Mr. Thompson and
21 his counsel at the time filed declarations opposing the motion, neither of these
22 declarations was signed. (*Id.* at 19.) Consequently, the court declined to consider them.

1 | (*Id.*) Mr. Thompson ultimately filed a second signed declaration one week after the
2 | noting date for the motion that was different from his first declaration. (*Id.* at 20 (citing
3 | 9/6/13 Thompson Decl. (Dkt. # 53)).) The court also declined to consider this declaration
4 | because it was untimely. The court granted Plaintiffs' motion on partial summary
5 | judgment, piercing IAI's and IAP's corporate veils with respect to Mr. Thompson. (*Id.* at
6 | 20-21.)

7 | Nevertheless, the court explained that even if it had considered Mr. Thompson's
8 | second untimely declaration, the result would have been no different. (*Id.* at 22-24.)
9 | Plaintiffs had provided documentation that Mr. Thompson dissipated corporate assets,
10 | and Mr. Thompson admitted that some of his activities might technically qualify as
11 | commingling. (9/1/13 Thompson Decl. at 11.) The court ruled that, in light of this
12 | evidence, Mr. Thompson's bald assertions that his practices had done no harm to
13 | Plaintiffs were insufficient to create a genuine issue of material fact. (11/21/13 Order at
14 | 22-24.) The court explained that this was particularly so because all of the records
15 | necessary to support his stance were, or should have been, within his control. (*Id.* at 22-
16 | 23.) Yet, he failed to provide them to the court and failed to explain why. (*Id.*) In light
17 | of these facts, Mr. Thompson's late-filed, self-serving declaration, which was devoid of
18 | any supporting evidence, failed to create a genuine issue of fact. (*Id.* at 23-24.)

19 | In addition to entering summary judgment on the foregoing issues, the court
20 | entered default against Defendants with respect to Plaintiffs' claims for breach of contract
21 | and copyright infringement as a sanction for their continued discovery violations and
22 | failure to abide court orders. (*Id.* at 37.) Although the court had already entered

1 summary judgment with respect to copyright infringement (*see* 5/29/13 Order at 21), the
2 effect of the entry of default was to provide an alternate basis for liability and to eliminate
3 Defendants’ right to a jury trial with respect to statutory damages. Finally, the court also
4 (1) issued an order to show cause with respect to its prior ruling on partial summary
5 judgment concerning the amount of Mr. Curtis’s contract damages, (2) reserved ruling on
6 Plaintiffs’ request for maximum statutory damages on their copyright infringement
7 claims and damages for other claims until after an evidentiary hearing on damages
8 pursuant to Federal Rule of Civil Procedure 55(b)(2)(B), and (3) granted Plaintiffs’
9 request for reasonable attorneys’ fees and expenses. (*See generally* 11/21/13 Order.)

10 Following further submissions from the parties, the court initially set the
11 evidentiary hearing on default judgment and damages for April 4, 2014. (1/10/14 Order
12 (Dkt. # 65) at 5.) However, following a motion to modify the schedule by Mr. Thompson
13 and Ms. Thompson (Dkt # 67), the court rescheduled the evidentiary hearing for April 30,
14 2014. (1/23/14 Order (Dkt. # 71).) As a part of its January 10, 2014, order, the court also
15 granted the Thompsons’ request to proceed pro se in this litigation. (1/10/14 Order at 3.)

16 On February 19, 2014, Ms. Thompson filed a pro se motion for summary
17 judgment even though the court previously had determined her to be liable for breach of
18 contract on default and for copyright infringement on summary judgment. (*See* Mot.)
19 Among other things, Ms. Thompson alleges that she has “not been involved in any of the
20 decisions which relate to the Plaintiff’s complaint” and that Mr. Thompson “agreed to
21 take full responsibility for providing the detailed answers to [the discovery demands] and
22 sent his final information to Mr. King on February 2, 2013.” (*Id.* at 2, 3.) “However,

1 [she] did not learn until later that Mr. King hadn't filed the required responses with the
2 court until February 20, 2013." (*Id.*) Importantly, Ms. Thompson admits that the late
3 filing made her "feel betrayed, upset, confused, and determined not to provide [her]
4 personal information." (*Id.*) Accordingly, Ms. Thompson asks the court to release her
5 from any and all liability and to dismiss her as a defendant in the case. (*Id.* at 1.)

6 III. ANALYSIS

7 A. The Court Liberally Construes Ms. Thompson's Pro Se Motion

8 As detailed above, the court has already granted Plaintiffs' motion for summary
9 judgment as to Ms. Thompson's liability on copyright infringement (5/29/13 Order at 21)
10 and Plaintiffs' motion for default as to Plaintiffs' contract claims and copyright claims
11 (11/21/13 Order). Therefore, because the court has already determined Ms. Thompson's
12 liability on summary judgment or by entering default, her subsequent summary judgment
13 motion regarding liability is unavailing.

14 Federal courts may, however, "ignore the legal label that a pro se litigant attaches
15 to a motion and recharacterize the motion in order to place it within a different legal
16 category." *Castro v. U.S.*, 540 U.S. 375, 381 (2003); *see also U.S. v. Eatinger*, 902 F.2d
17 1383, 1385 (9th Cir. 1990) (per curiam) (finding that the district court erred in not
18 construing motion for reconsideration of sentence as a habeas petition). Accordingly, to
19 "create a better correspondence between the substance [of the motion] and its underlying
20 legal basis," *Castro*, 540 U.S. at 381-382, the court construes Ms. Thompson's motion as
21 a motion to set aside default for "good cause" under Federal Rule of Civil Procedure
22 55(c) and as a motion for reconsideration under Local Rule LCR 7(h).

1 **B. Motion to Set Aside Default**

2 The import of the court’s order granting default on Plaintiffs’ motion for sanctions
3 was to provide an alternate basis for copyright infringement liability and to eliminate
4 Defendants’ right to a jury trial with respect to a determination of statutory damages for
5 copyright infringement. (*See* 11/21/13 Order at 29-40.) In addition, the court also
6 entered default against Defendants with respect to Plaintiffs’ breach of contract claim.
7 (*Id.*) The court had already granted Plaintiffs’ first motion for summary judgment with
8 respect to IAI’s and IAP’s liability for breach of contract (*see* 5/29/13 Order at 10), and
9 Plaintiffs’ third motion for summary judgment with respect to Mr. Thompson’s liability
10 for breach of contract by piercing the corporate veil (*see* 11/21/13 Order at 21). Thus,
11 with respect to these three defendants, the court’s default order merely provides an
12 alternate basis for breach of contract liability and eliminates their right to a jury trial with
13 respect to damages. The court’s default order, however, also imposed liability against
14 Ms. Thompson for breach of contract.

15 Ms. Thompson’s motion (liberally construed) asks the court to set aside its entry
16 of default for “good cause.”² *See* Fed. R. Civ. P. 55(c). To determine “good cause” a
17 court must consider three disjunctive factors: (1) whether the party seeking to set aside
18 default engaged in culpable conduct that led to the default; (2) whether the moving party
19 has no meritorious defense; and (3) whether reopening the default would prejudice the

20
21 ² The full text of Federal Rule of Civil Procedure 55(c) reads: “The court may set aside
22 an entry of default for good cause, and it may set aside a default judgment under Rule 60(b).”
Fed. R. Civ. P. 55 (c).

1 non-moving party. *United States v. Signed Personal Check No. 730 of Yubran S. Mesle*,
2 615 F.3d 1085, 1091 (9th Cir. 2010). The presence of any one of these factors is
3 sufficient for the court to refuse to set aside default. *Id.* Additionally, although the above
4 test applies to motions seeking relief from default under Rule 55(c) and default judgment
5 under Rule 60(b), the test is more liberally applied in the 55(c) context. *Id.* at 1091 n.1
6 (citing *Cracco v. Vitran Exp., Inc.*, 559 F.3d 625, 631 (7th Cir. 2009)).

7 **1. Culpable Conduct**

8 As another court in this district has recognized, there appear to be two lines of
9 cases in the Ninth Circuit on the correct standard “for evaluating the ‘culpable conduct’
10 factor for purposes of setting aside a default.” *Lakeview Cheese Co., LLC v. Nelson-*
11 *Ricks Creamery Co.*, 296 F.R.D. 649, 653 (D. Idaho 2013). The first line concerns a
12 defaulted party not represented by legal counsel or otherwise legally sophisticated.
13 *Mesle*, 615 F.3d at 1093. Under this standard, a party’s “conduct is culpable if he has
14 received actual or constructive notice of the filing of the action and *intentionally* failed to
15 answer.” *Id.* at 1092 (emphasis in original) (quoting *TCI Life Ins. Plan v. Knoebber*, 244
16 F.3d 691, 697 (9th Cir. 2001)). The “intentionality” component requires an independent
17 showing of bad faith. *Id.* An unsophisticated party could receive notice and fail to
18 respond for reasons not in bad faith. *See id.* at 1093 (finding that defendant’s conduct
19 was not in bad faith because he was “ignorant of the law” and unable to understand his
20 legal obligations). Rather, “intentionality” occurs only if there is no explanation for the
21 unsophisticated party’s inaction other than a “devious, deliberate, willful, or bad faith
22 failure to respond.” *Id.* Therefore, the test for unsophisticated parties requires a two-step

1 inquiry: (1) whether there was notice and a failure to respond, and (2) if so, whether that
2 failure was “intentional” because it was in bad faith. *See id.*

3 The second line of cases concerns legally sophisticated parties. *See Lakeview*
4 *Cheese Co.*, 296 F.R.D. at 653. Under the second standard, courts assume a sophisticated
5 party’s failure to respond was “intentional.” *Mesle*, 615 F.3d at 1093. Rather than the
6 two-step inquiry associated with unsophisticated parties, a court need only ask whether a
7 sophisticated party failed to respond. *Lakeview Cheese Co.*, 296 F.R.D. at 653. That
8 failure alone triggers culpability because courts assume “intentionality.” *Id.* Parties with
9 legal representation know, or should know, the consequences of a failure to respond.
10 *Mesle*, 615 F.3d at 1093. Accordingly, a legally sophisticated party’s failure to respond
11 after receiving actual or constructive notice is sufficient for a finding of culpability. *Id.*;
12 *see Direct Mail Specialists, Inc. v. Eclat Computerized Techs., Inc.*, 840 F.2d 685, 690
13 (9th Cir. 1988) (holding that actual or constructive notice and failure to respond was
14 sufficient for a finding of culpable conduct because defendant, as a lawyer, “presumably
15 was well aware of the dangers of ignoring service of process”); *Franchise Holding II,*
16 *LLC v. Huntington Rests. Group, Inc.*, 375 F.3d 922, 926 (9th Cir. 2004) (holding that
17 actual or constructive notice sufficient for finding of culpable conduct when party’s
18 lawyer received service of process and failed to respond to the action).

19 Although Ms. Thompson was represented by counsel at the time the court entered
20 default, she presently proceeds pro se. (*See* 1/10/14 Order (Dkt. 65) at 3.) Because she
21 was represented at the time the court entered default, it seems logical that she should be
22 held to the standard of a legally sophisticated party. Nevertheless, the court need not

1 make this determination because she has not established “good cause” to set aside default
2 under either standard. Ms. Thompson deliberately disobeyed court orders, independently
3 establishing the bad faith intentionality necessary for a finding of culpable conduct.

4 Despite numerous court orders to the contrary, Ms. Thompson concedes in her
5 motion that she was “determined not to provide [her] personal [financial] information.”
6 (Mot. at 3.) The Ninth Circuit Court of Appeals characterizes repeated disregard of court
7 orders as bad faith conduct. For example, in *Yusov v. Yusef*, 892 F.2d 784 (9th Cir.
8 1989), the Yusovs and their attorney repeatedly disobeyed court orders, including those
9 compelling discovery. *Id.* at 786. The district court entered default judgment against the
10 Yusovs for their failure to comply and denied the Yusovs’ motion to set the default
11 judgment aside. *Id.* The Ninth Circuit held that the district court did not abuse its
12 discretion in denying the motion to set aside default judgment. *Id.* at 787. The Court
13 found that both the Yusovs and their attorney engaged in inexcusable, bad faith conduct
14 when they “intentionally and repeatedly disregarded court orders.” *Id.* Similarly, even
15 when a party proceeds pro se, courts in this Circuit have found that an intentional
16 disregard of court orders is sufficient to find bad faith. *U.S. v. Wight*, Civil No.
17 CIV.S989443FCD/DAD, 2002 WL 664005, at *3 (E.D. Cal. Mar. 7, 2002) (finding that
18 pro se defendant’s “intentional and consistent disregard of a court order is inexcusable
19 and is sufficient to establish bad faith”).

20 Ms. Thompson’s admitted “determin[ation] not to provide [her] personal
21 [financial] information” (Mot. at 3), establishes her intentional disregard for this court’s
22 orders and is sufficient to establish bad faith irrespective of her status as a pro se or

1 | sophisticated litigant. *Wight*, 2002 WL 664005 at *3; *Yusov*, 892 F.2d at 787. Bad faith
2 | establishes “intentionality.” *Mesle*, 615 F.3d at 1092. A finding of “intentionality” after
3 | receiving notice of a duty to act establishes culpable conduct. *Id.* Accordingly, because
4 | Ms. Thompson disregarded the court’s orders, the court finds that she engaged in
5 | culpable conduct.³

6 | **2. Meritorious Defense or Prejudice to Plaintiffs**

7 | The court need not make a determination as to whether Ms. Thompson presents a
8 | meritorious defense or if setting aside default would prejudice Plaintiffs because the
9 | presence of any of the foregoing three factors is sufficient for the court to deny Ms.
10 | Thompson’s motion. *Mesle*, 615 F.3d at 1091. Ms. Thompson engaged in culpable
11 | conduct by intentionally disregarding court orders. (*See Mot.* at 3.) Accordingly, on that
12 | ground, the court refuses to set aside default for “good cause” and denies her liberally
13 | construed motion.⁴

15 |
16 | ³ Under *Community Dental Services v. Tani*, 282 F.3d 1164 (9th Cir. 2002), a movant’s
17 | conduct may not be culpable if her attorney was grossly negligent. The court, however, finds
18 | *Tani* inapplicable here. Even if Ms. Thompson’s attorney was “grossly negligent,” a movant
19 | cannot seek relief under *Tani* if she independently engaged in culpable conduct. *Tani*, 282 F.3d
20 | at 1172 (“A proper finding of culpable conduct by Tani would be sufficient to justify the district
21 | court’s refusal to grant a Rule 60(b) motion.”). As discussed above, Ms. Thompson engaged in
22 | culpable conduct, making *Tani* inapplicable in this case.

20 | ⁴ Though the court denies Ms. Thompson’s motion to set aside default, this does not
21 | automatically entitle Plaintiffs to an entry of default judgment. When considering the entry of
22 | default judgment, the court will weigh the following factors: (1) the possibility of prejudice to
the plaintiff; (2) the merits of Plaintiffs’ substantive claim; (3) the sufficiency of the complaint;
(4) the sum of money at stake in the action; (5) the possibility of a dispute concerning material
facts; (6) whether the default was due to excusable neglect; and (7) the strong policy underling
the Federal Rules of Civil Procedure favoring decisions on the merits. *Eitel v. McCool*, 782 F.2d

1 **C. Motion for Reconsideration**

2 The court granted Plaintiffs’ motion for summary judgment on Ms. Thompson’s
3 liability with respect to copyright infringement. (5/29/13 Order.) Liberally construed,
4 Ms. Thompson’s motion also asks the court to reconsider that order. (*See generally*
5 Mot.) Pursuant to the court’s Local Rules, a motion for reconsideration of that order
6 must be filed “within fourteen days after the order is filed.” Local Rules W.D. Wash.
7 LCR 7(h)(2). Failure to comply with this schedule “may be grounds for denial of the
8 motion.” *Id.* The court’s order to which Ms. Thompson’s motion relates was filed May
9 29, 2013. (*See generally* 5/29/13 Order.) Ms. Thompson’s liberally construed motion for
10 reconsideration, which was filed on February 12, 2014, more than seven months after the
11 court’s order, is therefore untimely under the court’s Local Rules. The court denies her
12 motion on this ground.

13 Even if, however, the court were to consider the substance of Ms. Thompson’s
14 untimely motion, it would not reconsider its prior order. “Motions for reconsideration are
15 disfavored.” Local Rules W.D. Wash. LCR 7(h)(1). The court will ordinarily deny such
16 motions in the absence of (1) “a showing of manifest error in the prior ruling” or (2) “a
17 showing of new facts or legal authority which could not have been brought to its attention
18 earlier with reasonable diligence.” *Id.* Ms. Thompson makes neither showing required
19 by the court’s Local Rules. Ms. Thompson presents no new legal authority and does not
20 demonstrate a manifest error in the court’s prior ruling. Specifically, she does not

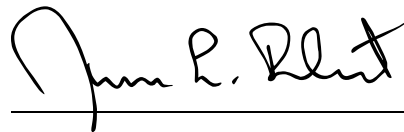
21
22 1470, 1471-1472 (9th Cir. 1986). Some of the items or issues raised in Ms. Thompson’s motion
may be relevant with respect to the hearing on default judgment and damages on April 30, 2014.

1 address the fact that she admitted to copyright infringement in response to Plaintiffs'
2 requests for admission. (See 5/29/13 Order at 20.) Consequently, the court denies her
3 liberally construed motion for reconsideration of its prior order on summary judgment.

4 **IV. CONCLUSION**

5 As described above, the court liberally construes Ms. Thompson's pro se motion
6 for summary judgment as a motion to set aside default under Federal Rule of Civil
7 Procedure 55(c) and as a motion for reconsideration under Local Rule LCR 7(h) of its
8 May, 29, 2013, order granting in part and denying in part Plaintiffs' motion for summary
9 judgment. Consistent with the analysis above, the court DENIES Ms. Thompson's
10 motion (Dkt. # 77).

11 Dated this 15th day of April, 2014.

12
13 

14 JAMES L. ROBART
15 United States District Judge
16
17
18
19
20
21
22