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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 ALLSTATE INSURANCE CO., *et al.*,

10 Plaintiffs,

11 v.

12 LIGHTHOUSE LAW P.S. INC., *et al.*,

13 Defendants.
14

Case No. C15-1976

ORDER VACATING
DEFAULT AND DEFAULT
JUDGMENT

15 This matter comes before the Court on a motion to vacate entries of default and default
16 judgment entered against defendants Seok Bae “Mike” Seo, Lee Ok Mi, and Hanna & Dooree
17 Corporation (“H&D Corp.”). Dkt. # 114. The Court has considered the parties’ memoranda,
18 filings, and exhibits. For the reasons explained below, defendants’ motion is GRANTED.

19 **I. BACKGROUND**

20 This matter stems from a lawsuit brought by Allstate Insurance Company and several of
21 its associated corporate entities¹ (together, “Allstate”) alleging a scheme of false insurance
22 claims submitted through a sham law firm. The three defendants who bring this motion were not
23 defendants in Allstate’s original complaint, Dkt. # 1, but during discovery Allstate contacted and
24 corresponded with Mr. Seo, obtained documents from him via subpoena, and deposed him July
25 12, 2016. At that deposition, Mr. Seo was represented by attorney Shawn McCully.

26
27 ¹ The associated corporate entities that are plaintiffs along with Allstate Insurance Company are Allstate
28 Indemnity Company, Allstate Fire & Casualty Insurance Company, and Allstate Property & Casualty
Insurance Company.

1 The Court dismissed the original complaint, but granted Allstate leave to amend. Dkt.
2 # 47. On August 17, 2016, Allstate filed an amended complaint that newly named as defendants
3 Mr. Seo, his wife Ms. Mi, and H&D Corp., a company Mr. Seo apparently used to do business
4 with the law firm at the center of the lawsuit's allegations. Dkt. # 52. The day Allstate filed its
5 amended complaint, Allstate's counsel emailed copies of the amended complaint to various
6 parties, including Mr. McCully. Dkt. # 119-1 at 1. Mr. McCully responded by notifying
7 plaintiff's counsel that it was unlikely he would continue to represent Mr. Seo and that he would
8 not accept service on Mr. Seo's behalf. Dkt. # 119-1 at 2. The morning of October 19, 2016,
9 Allstate served the amended complaint and summons on Mr. Seo and on Ms. Mi, who accepted
10 service on her own behalf and on behalf of H&D Corp. Dkt. ## 79, 80, 81.

11 Mr. Seo and Ms. Mi did not answer the amended complaint or otherwise defend the suit,
12 but Mr. Seo continued to cooperate and correspond with plaintiff's counsel. Dkt. # 114-1 at 13.
13 For example, hours after Mr. Seo was served with the amended complaint, he sent the following
14 email to the offices of plaintiff's counsel:

15 Please reschedule my deposition which scheduled on October 24, 2016 9:30 a.m
16 due to attorney withdraw from my case. I need to find new attorney for this matter.
17 Beside that, I am not going to be available on November because I will be with my
18 father to get his lung cancer treatment and surgery plane with doctors in CA.

18 thanks

19 Michael

20 Dkt. # 119-1 at 9 (mistakes in original). Two days later, he followed up with another message:

21 I got noticed the deposition form my priviou attorney yesterday's email. I don't want
22 to be in the deposition by myself. I will find attorney for my deposition asap. I am
23 not available in first two weeks of November. I am back to Seattle on 13th of
24 November. I would like to reschedule after that and let me know.

24 Thanks

25 Dkt. # 119-1 at 9 (mistakes in original).

26 Allstate continued to correspond with Mr. Seo about testifying against the original
27 defendants and other topics, but simultaneously pursued judgment by default, the mechanism in
28 the Federal Rules of Civil Procedure for pursuing judgment against an unresponsive party whose

1 failures to respond have brought the process of a lawsuit to a halt. See Fed. R. Civ. P. 55.
2 Obtaining a default judgment begins by seeking an entry of default if a defendant fails to
3 responsively plead or otherwise defend a suit within twenty-one days of service. See Fed. R.
4 Civ. P. 12(a)(1)(A)(ii); Fed. R. Civ. P. 55(a). Mr. Seo failed to file a responsive pleading with
5 the Court within twenty-one days of service, and on November 10, 2016—twenty-two days after
6 service—Allstate sought a default against H&D Corp., Mr. Seo, and Ms. Mi. Dkt. # 81. The day
7 that request was filed, plaintiff’s counsel emailed Mr. Seo a copy of that motion. Dkt. # 114-1 at
8 13. Mr. Seo responded with the following message:

9 Dear. Sarah

10 I totally don’t understand all about the motion for default.

11 I am still waiting the reschedule of deposition from Oct. 24, 2016.

12 I email, I called your office and left message to request rescheduling due to my
13 attorney withdrawing.

14 As I informed to your office, my previous attorney notice me the withdraw this case
15 on Oct. 18th meeting in his office.

16 Therefore, I can’t find new attorney during the 4 days before the deposition.

17 I haven’t have any notice from previous attorney until Oct. 18th meeting.

18 Please reschedule the deposition and let me know.

19 Respectfully

20 michael seo

21 Dkt. # 114-1 at 13 (mistakes in original). The next day, Mr. Seo spoke on the phone with
22 plaintiff’s counsel to set up a meeting between him and one of the team’s attorneys, Rory Leid,
23 for November 14, 2016. Dkt. # 114-1 at 3.

24 On November 14, 2016, the Clerk entered a default against H&D Corp., Mr. Seo, and
25 Ms. Mi. Dkt. # 84. The same day, Mr. Seo received a follow up via both voicemail and email
26 about the planned meeting between Mr. Seo and Mr. Leid, which Mr. Seo confirmed. Dkt.
27 # 114-1 at 15. The two met and discussed potential wrongdoing on the part of the other
28 defendants. Dkt. # 114-1 at 3–4. Two weeks later on November 28, 2016, Mr. Leid again
deposed Mr. Seo, this time through a Korean interpreter but without representation of counsel.
Dkt. # 90-2 at 47.

1 From then on, the other defendants continued to litigate the matter but Mr. Seo appears to
2 have only participated in the case by preparing to testify if the case went to trial. After discovery
3 went on for some time, Allstate settled with the other defendants. Dkt. ## 91, 92, 103. Two days
4 after settling with the last of those defendants, Allstate moved for a default judgment against
5 H&D Corp., Mr. Seo, and Ms. Mi. Dkt. # 105. Allstate did not give them notice of the motion
6 for default judgment.

7 On April 25, 2017, the Court granted Allstate's motion and entered a default judgment
8 against the three defendants in the amount of \$111,197.57 plus interest. Dkt. ## 108, 109. After
9 Allstate began attempts to collect that judgment, defendants retained counsel and filed the
10 instant motion. Dkt. # 114.

11 II. DISCUSSION

12 Federal Civil Rule 55 provides for the entry of defaults and default judgments. There is a
13 strong policy of resolving cases on the merits instead of through defaults, see Eitel v. McCool,
14 782 F.2d 1470, 1472 (9th Cir. 1986), and a default judgment is an extraordinary remedy meant
15 to deter parties from employing avoidance or unresponsiveness as litigation tactics, see 10A
16 Charles A. Wright & Arthur R. Miller, et al., Fed. Prac. & Proc. Civ. § 2681 (4th ed. 2008 &
17 Supp. 2017) (“[T]he possibility of being held in default acts as a deterrent to those parties
18 resorting to delay as an element of their litigation strategy.”); 10 James Wm. Moore, et al.,
19 Moore's Federal Practice - Civil § 55.02 (3d ed. 2017) (“Rule 55 defaults and default judgments
20 are a way to deter a responding party from halting the adversary process.”).

21 A party subject to a default judgment has several options for setting the judgment aside.
22 The Court may relieve a party from a default judgment in certain circumstances, including
23 where there is “mistake, inadvertence, surprise, or excusable neglect,” Fed. R. Civ. P. 60(b)(1),
24 or “for any other reason that justifies relief,” Fed. R. Civ. P. 60(b)(6); see also Fed. R. Civ. P.
25 55(c) (“The Court . . . may set aside a default judgment under Rule 60(b).”).

26 In addition, a default judgment may be set aside if notice was required under Rule 55 but
27 never given. Rule 55 requires notice of a motion for default judgment if the defaulting party has
28 appeared in the case. Fed. R. Civ. P. 55(b). To trigger the requirement, a party need not have

1 formally appeared before the Court. Instead, “informal contacts between the parties” will
2 sufficiently activate Rule 55’s notice requirement when the defaulting party has demonstrated an
3 intention to participate in the suit. In re Roxford Foods, Inc., 12 F.3d 875, 879 (9th Cir. 1993);
4 see also Muniz v. Vidal, 739 F.2d 699, 700 (1st Cir. 1984) (“Although appearance in an action
5 typically involves some presentation or submission to the court—a feature missing from this
6 case—there is strong authority requiring a court to look beyond the presence or absence of such
7 formal actions to examine other evidence of active representation.” (marks and citation
8 omitted)). When the Rule’s notice requirement applies, failure to provide notice “is a serious
9 procedural irregularity that usually justifies setting aside a default judgment.” Wilson v. Moore
10 & Assocs., Inc., 564 F.2d 366, 369 (9th Cir. 1977).

11 Here, the Court finds the circumstances warrant setting aside the default judgment. First,
12 the Court finds that defendants are entitled to relief under Rule 60(b), because the record
13 indicates their failure to defend was due to mistake and inadvertence, see Fed. R. Civ. P.
14 60(b)(1), and because the circumstances otherwise justify relief, see Fed. R. Civ. P. 60(b)(6). It
15 is unclear whether defendants, who are not native English speakers and were proceeding without
16 representation, understood the difference between the subpoenas and depositions that had
17 already been served on them and the amended complaint that newly added them as defendants.
18 The record does indicate, however, that defendants were clearly not ignoring the case, and even
19 demonstrated a willingness to cooperate with plaintiffs. It would make little sense for defendants
20 to continue cooperating and engaging with this case’s proceedings in the capacity for which they
21 faced no legal liability, while simultaneously intentionally avoiding the very same proceedings
22 in the capacity for which they faced serious legal implications.

23 Second, the Court finds that defendants were entitled to notice under Rule 55, because the
24 continuous correspondences and interactions between Mr. Seo and Allstate’s counsel were
25 sufficient to demonstrate an intention to participate in the resolution of the case. Hours after
26 being served with the amended complaint, Mr. Seo contacted plaintiff’s counsel expressing a
27 desire to reschedule depositions, notifying them he lacked legal representation, and explaining
28 his unavailability in the coming month based on his need to attend to his father’s health.

1 Compare Dkt. # 78 (certifying service on Mr. Seo on October 19, 2016, at 9:09 AM), with Dkt.
2 # 119-1 at 9 (containing email from Mr. Seo to counsel’s office on October 19, 2016, at 11:46
3 AM). In addition to Mr. Seo’s correspondence that day, he went on to interact with plaintiff’s
4 counsel nearly a dozen times through phone calls, emails, and an in-person meeting leading up
5 to and including the day the Clerk of Court entered a default. What is more, those numerous
6 interactions cast serious doubt on the repeated representations by plaintiff’s counsel to the Court
7 that this case met the standard of the “process ha[ving] been halted because of an unresponsive
8 party.” Dkt. # 81 at 3 (Motion for Default); Dkt. # 105 at 8 (Motion for Default Judgment). Mr.
9 Seo’s ongoing interactions with Allstate’s counsel were more than enough contacts to
10 demonstrate he intended to participate in this lawsuit.

11 For these reasons, the Court also finds defendants have shown good cause why the
12 Clerk’s entry of default should be vacated. See Fed. R. Civ. P. 55(c).

13 * * *

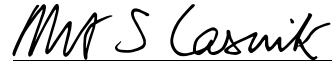
14 As a final matter, plaintiffs request that the Court strike from the record certain material
15 attached to this motion that describes unrelated sanctions against the law firm representing
16 Allstate in this case. Dkt. # 118 at 12. The Court denies that request, but clarifies that those
17 filings, and the sanctions they describe, did not at all impact the Court’s determination of this
18 motion’s merits. In addition, plaintiffs filed a surreply requesting that the Court strike material
19 submitted with defendants’ reply. Dkt. # 123. The Court concludes defendants’ reply brief is
20 acceptable and complies with LCR 7(b), and accordingly denies that request as well.

21 **III. CONCLUSION**

22 For the foregoing reasons, defendants’ motion, Dkt. # 114, is GRANTED. The Court
23 VACATES the default judgment, Dkt. # 108, and the Clerk’s entry of default, Dkt. # 84.

24 Defendants shall file an answer or otherwise respond to the complaint within twenty-one
25 (21) days of the date of this order. The Court will also issue a new order regarding initial
26 disclosures and a joint status report.

1 DATED this 29th day of December, 2017.

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4 Robert S. Lasnik
5 United States District Judge
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