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

8 AMAZON.COM SERVICES LLC,

9 Plaintiff,

10 v.

11 PARADIGM CLINICAL RESEARCH
12 INSTITUTE INC, RAMPRASAD
13 DANDILLAYA, JUAN JESUS ROJAS
14 DE BORBON, KARMA FAMILY LLC,
KAREEM MARMOSH ,

Defendants.

CASE NO. 2:21-cv-00753

ORDER GRANTING KARMA
DEFENDANTS' MOTION TO SET
ASIDE DEFAULT

15 **1. INTRODUCTION**

16 Plaintiff Amazon.com Services LLC amended its complaint to name Karma
17 Family LLC and Dr. Kareem Marmosh ("Karma Defendants") as defendants. Dkt.
18 No. 66. The Karma Defendants failed to appear, answer, or otherwise defend
19 against the lawsuit, so Amazon moved for, and the Court entered, an order of
20 default. Dkt. Nos. 81, 83. The Karma Defendants now move to set aside the default,
21 arguing good cause exists to do so. Dkt. No. 85.
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1 request. *Id.* at 3. On November 16, 2023, the Karma Defendants moved to set aside
2 the default. Dkt. No. 85.

3 **3. DISCUSSION**

4 **3.1 Legal standard.**

5 The Court may set aside an entry of default for good cause. Fed. R. Civ. P. 55(c).
6 To find “good cause,” the Court “must ‘consider three factors: (1) whether [the party
7 seeking to set aside the default] engaged in culpable conduct that led to the default;
8 (2) whether [it] had no meritorious defense; or (3) whether reopening the default
9 judgment would prejudice’ the other party.” *United States v. Signed Pers. Check No.*
10 *730 of Yubran S. Mesle*, 615 F.3d 1085, 1091 (9th Cir. 2010) (quoting *Franchise*
11 *Holding II, LLC. v. Huntington Restaurants Grp., Inc.*, 375 F.3d 922, 925–26 (9th
12 Cir. 2004)).

13 Except in “extreme circumstances,” a case should be decided on the merits
14 rather than by default. *Mesle*, 615 F.3d at 1089 (citing *Falk v. Allen*, 739 F.2d 461,
15 463 (9th Cir. 1984)). “The court’s discretion is especially broad where, as here, it is
16 entry of default that is being set aside, rather than a default judgment.” *Mendoza v.*
17 *Wight Vineyard Mgmt.*, 783 F.2d 941, 945 (9th Cir. 1986).

18 **3.2 Culpability of the Karma Defendants’ conduct.**

19 “[A] defendant’s conduct is culpable if he has received actual or constructive
20 notice of the filing of the action and *intentionally* failed to answer.” *Mesle*, 615 F.3d
21 at 1092 (citation omitted) (emphasis in original). “[T]he term ‘intentionally’ means
22 that a movant cannot be treated as culpable simply for having made a conscious
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1 choice not to answer; rather, to treat a failure to answer as culpable, the movant
2 must have acted with bad faith, such as an ‘intention to take advantage of the
3 opposing party, interfere with judicial decisionmaking, or otherwise manipulate the
4 legal process.’” *Id.* (citation omitted). To deem a defendant’s conduct culpable, there
5 cannot be an “explanation of the default inconsistent with a devious, deliberate,
6 willful, or bad faith failure to respond.” *Id.*

7 Marmosh has offered a plausible explanation for his default, consistent with
8 good faith conduct. He contends that he was unaware of the lawsuit until July 4,
9 2023. Dkt. No. 85-1 at 2. He denies ever receiving initial service on May 3, 2023. *Id.*
10 He posits that his elderly father, who has dementia symptoms, may have accepted
11 service on his behalf without telling him. *Id.* After Marmosh learned of the lawsuit,
12 he contacted Jonathan Freund, who was already an attorney in this lawsuit, to help
13 him respond. Dkt. No. 85-1 at 3. On August 22, 2023, Freund contacted Amazon’s
14 counsel to ask them to stipulate to set aside the default entered against the Karma
15 Defendants. Dkt. No. 85-2 at 2. On August 24, 2023, Amazon’s counsel responded
16 that they would not “set aside the default.” *Id.* at 3. The Karma Defendants moved
17 to set aside the default on November 16, 2023. Dkt. No. 85.

18 Amazon questions the validity of Marmosh’s claims. Amazon includes a
19 declaration from Gonzalo Ponce, their process server, indicating that he served a
20 “[g]entleman around 40 years of age” who said he was “Kareem Marmosh.” Dkt. No.
21 89. Even if Marmosh had been personally served and knew of the lawsuit, Amazon
22 has not alleged facts showing that the Karma Defendants acted intentionally or in
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1 bad faith to take advantage of Amazon or to manipulate the legal process. *Mesle*,
2 615 F.3d at 1092.

3 **3.3 The Karma Defendants have a potentially meritorious defense.**

4 A party seeking to set aside the entry of default must also allege facts that, if
5 true, would constitute a defense. *See id.* at 1094. This is not an “extraordinarily
6 heavy” burden. *TCI Grp. Life Ins. Plan v. Knoebber*, 244 F.3d 691, 700 (9th Cir.
7 2001).

8 The Court finds that the Karma Defendants have met this burden. The
9 Karma Defendants assert that the Court lacks personal jurisdiction over them.
10 They assert these facts in support of their defense: that they were not a party to the
11 underlying contract, were not alter egos of Paradigm or the other co-defendants,
12 had no or minimal contacts with Amazon and the state of Washington—such that
13 the exercise of personal jurisdiction over them would be unreasonable. They argue
14 that they did not “purposefully avail” themselves of doing business in Washington
15 nor did they “expressly aim” their acts at Washington. They also argue that they
16 are not an “alter ego” for Paradigm. Lack of personal jurisdiction is a meritorious
17 defense. *See Delta Sigma Theta Sorority, Inc. v. LaMith Designs, Inc.*, 275 F.R.D.
18 20, 29 (D.D.C. 2011) (finding lack of personal jurisdiction was a meritorious defense
19 to vacate entry of default).

20 Amazon contests the Karma Defendants’ version of events, particularly their
21 claim that Marmosh and Amazon did not have any direct communication. But “[a]ll
22 that is necessary to satisfy the ‘meritorious defense’ requirement is to allege
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1 sufficient facts that, if true, would constitute a defense[.]” *Mesle*, 615 F.3d at 1094.
2 “‘The question [of] whether the factual allegations [are] true’ is not to be determined
3 by the court when it decides the motion to set aside the default. Rather, that
4 question ‘would be the subject of the later litigation.’” *Id.* (citing *TCI Grp. Life Ins.*
5 *Plan*, 244 F.3d at 700). *See also Russell v. Samec*, No. 220-CV-00263-RSM-JRC,
6 2020 WL 3444407, at *3 (W.D. Wash. June 3, 2020), *report and recommendation*
7 *adopted*, No. 220-CV-00263-RSM-JRC, 2020 WL 3441033 (W.D. Wash. June 23,
8 2020) (looking to the merits of the motion to dismiss is “an inappropriate inquiry
9 when determining whether to grant the motion to vacate the entry of default”).

10 Thus, the Karma Defendants have shown a potentially meritorious defense.

11 **3.4 Prejudice.**

12 To constitute sufficient prejudice, “the delay must result in tangible harm
13 such as loss of evidence, increased difficulties of discovery, or greater opportunity
14 for fraud or collusion.” *TCI Group Life Ins. Plan*, 244 F.3d at 701 (internal citation
15 omitted).

16 In its opposition, Amazon only argues that litigating the Karma Defendant’s
17 defense would result in prejudice against Amazon. But “[b]eing forced to litigate on
18 the merits cannot be considered prejudicial because a plaintiff would have had to do
19 so anyway had there been no default.” *Yan v. Gen. Pot, Inc.*, 78 F. Supp. 3d 997,
20 1005 (N.D. Cal. 2015).

21 The Court concludes that setting aside the entry of default will not prejudice
22 Amazon.

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4. CONCLUSION

The Court is guided by its preference for “deciding cases on the merits whenever possible.” *Mesle*, 615 F.3d at 1091. The Court finds that all the *Mesle* factors support vacating the entry of default. Accordingly, the Court GRANTS the Karma Defendants’ motion (Dkt. No. 85) and vacates the entry of default (Dkt. No. 83).

Dated this 29th day of March, 2024.



Jamal N. Whitehead
United States District Judge