UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

MICHAEL GRECCO PRODUCTIONS, INC., **Plaintiff,** **v.** **WRAPMARKET, LLC,** **Defendant.**	**Case No.: SACV 17-01049-CJC(JDEx)** **ORDER DENYING DEFENDANT'S MOTION TO SET ASIDE DEFAULT AND DEFAULT JUDGMENT**

I. INTRODUCTION & BACKGROUND

Plaintiff Michael Grecco Productions, Inc. d/b/a Michael Grecco Photography, Inc. brought this copyright infringement action against Defendant WrapMarket, LLC. (Dkt. 3 [Complaint, hereinafter "Compl."].) Plaintiff filed its Complaint on June 15, 2017,

bringing one cause of action for copyright infringement. (*See generally id*.) Defendant was served with the Complaint on September 19, 2017, and an answer was due on October 10, 2017. (Dkt. 12.) Defendant failed to answer or otherwise appear before that deadline, and the clerk entered default against Defendant on October 13, 2017. (Dkt. 16.) On October 19, 2017, Plaintiff filed a motion for default judgment, (Dkt. 17), and Defendant still did not appear nor respond to Plaintiff's motion, (*see generally* docket entries). On November 8, 2017, the Court granted in substantial part Plaintiff's motion for default judgment and entered a judgment against Defendant. (Dkts. 19, 20.)

Defendant concedes that it was served with the summons and the Complaint on September 19, 2017. (Dkt. 22-1 [Declaration of Timothy Schneider] ¶¶ 3–4, 15.) Defendant also concedes that its answer or another responsive pleading was due on October 10, 2017. (*Id*. ¶ 4.) Nevertheless, Defendant offers no explanation why it failed to meet the October 10, 2017, deadline, or ever attempt to extend that deadline. Instead, Defendant is completely silent as to what Defendant did between September 19, 2017 and October 10, 2017. Defendant ignores this key period during which it was required to file an answer to the Complaint, and merely says that two days after the answer was due, on October 12, 2017, Defendant contacted a law firm, the Myers Law Group. (*Id*. ¶¶ 16, 17.) Defendant then says that on October 17, 2017, Defendant retained the Myers Law Group for this matter. (*Id*. ¶ 18.)

Defendant's attorney concedes that when he was retained, he knew that default had been entered against Defendant. (*Id*. ¶ 19.) Defendant's attorney also learned that the Court entered a default judgment against Defendant, but Defendant's attorney does not say when he learned this key fact. (*Id*. ¶ 20.) Although Defendant was served on September 19, 2017, and it knew by mid-October that a default had been entered against it, Defendant did not file any responsive pleading, oppose the motion for default judgment, or make any other appearance in this case.

Instead, the first action Defendant took in this case was on November 15, 2017—seven days after the Court had entered judgment—when its attorney sent Plaintiff's counsel a meet and confer letter. (*Id*. Ex. 7.) Moreover, the first time Defendant *appeared* in this action was on December 28, 2017, when Defendant filed a motion to set aside the entry of default and the default judgment. (Dkt. 22.) Defendant offers no explanation for its failure to appear and its failure to defend the judgment against it prior to December 28, 2017. Defendant is tellingly silent as to why it never answered the Complaint, despite timely service. For that reason, Defendant's motion to set aside the default and the judgment is DENIED.[1]

III. LEGAL STANDARD

Federal Rule of Civil Procedure 55(c) provides that a court may set aside an entry of default for "good cause." Fed. R. Civ. P. 55(c). Rule 60(b) provides that a court may set aside a default judgment for "mistake, inadvertence, surprise, or excusable neglect." Fed. R. Civ. P. 60(b)(1). The Ninth Circuit has clarified that the standards for Rule 55(c)'s "good cause" and Rule 60(b)'s "mistake" or "excusable neglect" are coextensive. *TCI Grp. Life Ins. Plan v. Knoebber*, 244 F.3d 691, 696 (9th Cir. 2001), *overruled on other grounds by Egelhoff v. Egelhoff ex rel. Breiner*, 532 U.S. 141, 147 (2001); *see also Franchise Holding II, LLC. v. Huntington Rests. Grp., Inc.*, 375 F.3d 922, 925 (9th Cir. 2004). Under both standards, the court considers the following three factors: (1) whether the defendant's culpable conduct led to the default; (2) whether the defendant has a meritorious defense; and (3) whether setting aside the default judgment would prejudice the plaintiff. *TCI Grp.*, 244 F.3d at 696. As these factors are in the disjunctive, the district court is free to deny the motion if any of the three factors is established in the

[1] Having read and considered the papers presented by the parties, the Court finds this matter appropriate for disposition without a hearing. *See* Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the hearing set for January 29, 2018, at 1:30 p.m. is hereby vacated and off calendar.

affirmative. *Franchise Holding*, 375 F.3d at 926 (citing *Am. Ass'n of Naturopathic Physicians v. Hayhurst*, 227 F.3d 1104, 1108 (9th Cir. 2000)). It is in the Court's discretion to set aside entries of default and default judgments, and this discretion is "especially broad" in the former instance. *Brady v. United States*, 211 F.3d 499, 504 (9th Cir. 2000). "Crucially, however, judgment by default is a drastic step appropriate only in extreme circumstances; a case should, whenever possible, be decided on the merits." *United States v. Signed Pers. Check No. 730 of Yubran S. Mesle*, 615 F.3d 1085, 1091 (9th Cir. 2010) (citation and quotations omitted).

IV. DISCUSSION

Defendant's culpable conduct led to the entry of default and the judgment against it. "A defendant's conduct is culpable if he has received actual or constructive notice of the filing of the action and intentionally failed to answer." *Signed Pers. Check No. 730 of Yubran S. Mesle*, 615 F.3d at 1092 (citation and quotations omitted). "[I]n this context the term 'intentionally' means that a movant cannot be treated as culpable simply for having made a conscious choice not to answer; rather, to treat a failure to answer as culpable, the movant must have acted with bad faith, such as an intention to take advantage of the opposing party, interfere with judicial decisionmaking, or otherwise manipulate the legal process." *Id*. (citation and quotations omitted).

Defendant concedes it received actual notice of the filing of the action, and the record indicates that Defendant intentionally failed to answer. Defendant offers no reason, much less good cause, why Defendant did not answer or respond to a motion for default judgment when it knew such a motion was pending. In light of the Defendant's silence on these key issues, the record indicates that Defendant waited to see how the Court would rule on Plaintiff's motion for default judgment before Defendant decided to appear in this action. Then, only because the Court's judgment was not in Defendant's

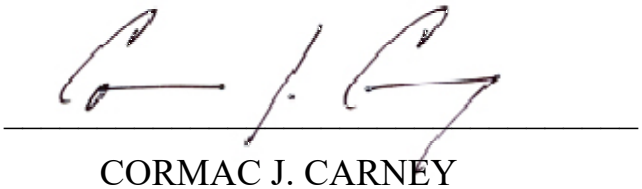
favor, Defendant decided to respond to Plaintiff and appear in this action months after its answer was due. In doing so, Defendant undermined the adversarial process and has attempted to take advantage of Plaintiff.

Judgment by default is a drastic step, and it is only appropriate in limited circumstances. Those limited circumstances nevertheless exist here. Defendant had numerous opportunities to appear in this case, and in fact retained an attorney to determine whether it should avail itself of the legal procedures that protect litigants from an erroneous judgment by default. Defendant intentionally failed to avail itself of these procedures, and now belatedly attempts to circumvent the legal process. The Court therefore finds that setting aside the default and default judgment is improper.

V. CONCLUSION

For the foregoing reasons, Defendant's motion to set aside the entry of default and the default judgment is DENIED.

DATED: January 26, 2018



CORMAC J. CARNEY
UNITED STATES DISTRICT JUDGE