

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

United States v. Salazar

No. 1:23-cv-01282-JLT-CDB (E.D. Cal. Apr. 23, 2025) · No. 1:23-cv-01282-JLT-CDB · Decided April 23, 2025

SUMMARY

The document contains findings and recommendations by a United States magistrate judge recommending denial of Defendants’ motion to set aside a default judgment in an action alleging sexual harassment in violation of the Fair Housing Act. The recommendation concludes that Defendants’ conduct was culpable and that they failed to present a meritorious defense, while finding the prejudice factor neutral. The parties were given 14 days to file objections.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	April 23, 2025
DOCKET	1:23-cv-01282-JLT-CDB
DISPOSITION	other
PROCEDURAL POSTURE	Defendants moved under Federal Rules of Civil Procedure 55(c) and 60(b)(1) to set aside a default judgment entered in favor of the United States. The magistrate judge issued findings and recommendations recommending denial of the motion.
STANDARD OF REVIEW	Under Rules 55(c) and 60(b)(1), relief from default judgment based on excusable neglect requires consideration of the defendant's culpable conduct, the existence of a meritorious defense, and prejudice to the opposing party. The test is disjunctive, so a finding that any one factor is satisfied may justify refusing to set aside the default judgment.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Javier Salazar, Jr., Javier Salazar, Sr., Ricardo Covarrubias v. United States of America

TOPICS

- default judgment
- default
- civil procedure
- affirmative defenses
- civil rights

PRACTICE AREAS

civil procedure

fair housing

civil rights

default judgment

remedies

QUESTIONS PRESENTED

1. Whether Defendants demonstrated excusable neglect warranting relief from the default judgment under Federal Rules of Civil Procedure 55(c) and 60(b)(1).
2. Whether Defendants' conduct was culpable, whether they presented a meritorious defense, and whether setting aside the default judgment would prejudice the United States.

HOLDINGS

1. Defendants' failure to respond was culpable because they had actual or constructive notice of the action, were repeatedly advised of their obligations, and nevertheless failed to answer or otherwise participate in the litigation.
2. Defendants failed to present a meritorious defense because their bare assertions of unintentional or misunderstood conduct and false accusations were unsupported by specific facts.
3. The prejudice factor was neutral because the record did not establish that reopening the case would cause cognizable prejudice beyond delay and inconvenience.

KEY QUOTATIONS

“judgment by default is a drastic step appropriate only in extreme circumstances; a case should, whenever possible, be decided on the merits.” (at 3)

“Defendants’ characterization of their conduct as merely excusably neglectful is baseless.” (at 7)

“In short, because Defendants failed to identify any potentially viable defenses, “nothing but pointless delay can result from reopening the judgment.”” (at 9)

FACTUAL BACKGROUND

The United States served Salazar Jr., Salazar Sr., and Covarrubias with a Fair Housing Act complaint alleging sex discrimination and severe or pervasive sexual harassment involving Angela McGinnis. Defendants repeatedly delayed responding, failed to obtain counsel or file an answer, and did not oppose the motion for default judgment despite court orders and extensions. The district court entered default judgment awarding damages and imposing modified injunctive relief. Defendants later asserted that their delay resulted from lack of awareness, limited English proficiency, and difficulty obtaining counsel, but offered no specific facts establishing a meritorious defense.

PROCEDURAL HISTORY

The United States sued Defendants under Title VIII of the Civil Rights Act of 1968, the Fair Housing Act, alleging sex discrimination and sexual harassment. After Defendants failed to timely respond despite service, communications with Plaintiff's counsel, court admonitions, and extensions to obtain counsel, the Clerk entered defaults and the magistrate judge recommended default judgment. The district judge adopted the

recommendation in part, granted default judgment as modified, and closed the case. Defendants then moved to set aside the default judgment; this opinion recommends denying that motion.

DISPOSITION

other

REMAND INSTRUCTIONS

None. The magistrate judge recommended that the district judge deny Defendants' motion to set aside the default judgment. The parties were given 14 days to file objections.

CASES CITED

- United States v. Aguilar, 782 F.3d 1101, 1105-06 (9th Cir. 2015)
- U.S. v. Signed Personal Check No. 730 of Yubran S. Mesle, 615 F.3d 1085, 1091-95 (9th Cir. 2010)
- Falk v. Allen, 739 F.2d 461, 463 (9th Cir. 1984) (per curiam)
- TCI Group Life Insurance Plan v. Knoebber, 244 F.3d 691, 697-701 (9th Cir. 2001)
- Delgado v. Dempsey’s Adult Care Homes, LLC, No. 22-15176, 2023 WL 3034263, at *1 (9th Cir. Apr. 21, 2023)
- Meadows v. Dominican Republic, 817 F.2d 517, 521-22 (9th Cir. 1987)
- Brandt v. American Bankers Insurance Co. of Florida, 653 F.3d 1108, 1111 (9th Cir. 2011)
- Hawaii v. Carpenters' Trust Funds v. Stone, 794 F.2d 508, 513 (9th Cir. 1986)
- Audio Toys, Inc. v. Smart AV Pty Ltd., No. CV 06-6298-SBA, 2007 WL 1655793, at *3 (N.D. Cal. June 7, 2007)
- Thompson v. American Home Assurance Co., 95 F.3d 429, 433-34 (6th Cir. 1996)
- Francois & Co., LLC v. Nadeau, 334 F.R.D. 588, 599 (C.D. Cal. 2020)
- Franchise Holding II, LLC v. Huntington Restaurants Group, Inc., 375 F.3d 922, 926-27 (9th Cir. 2004)
- Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014)

OPINION

United States v. Salazar

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 UNITED STATES OF AMERICA, Case No. 1:23-cv-01282-JLT-CDB 12 Plaintiff,

FINDINGS AND RECOMMENDATIONS TO

DENY DEFENDANTS’ MOTION TO SET

13

v. ASIDE DEFAULT JUDGMENT

14 JAVIER SALAZAR, JR., et al., (Doc. 37) 15 Defendants.

14-DAY OBJECTION PERIOD

16 17 18 Pending before the Court¹ is the motion of Defendants Javier Salazar, Jr., Javier Salazar,
19 Sr., and Ricardo Covarrubias (collectively, “Defendants”) to set aside default judgment, filed on
20 November 25, 2024. (Doc. 37). Plaintiff United States of America (“Plaintiff”) timely filed an
21 opposition to the motion (Doc. 39); Defendants did not reply. The undersigned deems the
motion 22 suitable for resolution without hearing and oral argument, and accordingly, the motion
hearing 23 noticed for November 19, 2025, is HEREBY VACATED. See E.D. Cal. Local Rule
230(g). For 24 the reasons set forth below, the undersigned will recommend Defendants’ motion
be denied. 25 26 27 1 On December 2, 2024, the Honorable District Judge Jennifer L. Thurston
referred the 1 I. Background² 2 On August 28, 2023, Plaintiff United States of America
 (“Plaintiff”) initiated this action 3 with the filing of a complaint to enforce the provisions of Title
VIII of the Civil Rights Act of 1968, 4 as amended, 42 U.S.C. §§ 3601, et. seq. (the “Fair Housing
Act” or “FHA”) on behalf of Angela 5 McGinnis (“McGinnis”) against Defendants. (Doc. 1).
Plaintiff alleges that Defendants – in their 6 respective capacities as apartment building owner and
rental managers – subjected McGinnis to 7 discrimination on the basis of sex, including
unwelcome sexual harassment that was severe or 8 pervasive. (Id.). 9 The Court set an initial
scheduling conference for November 20, 2023. (Doc. 3). On

10 October 26, 2023, Plaintiff filed an ex parte application to continue the scheduling conference
as

11 Plaintiff had yet to effectuate service of the complaint. (Doc. 5). Counsel for Plaintiff declared
he 12 had contacted Defendant Salazar Jr. by telephone and Defendant Salazar Jr. indicated that he
13 wanted time to obtain counsel. (Id., Declaration of Roshni Shikari at ¶ 3). On December 15,
2023, 14 Plaintiff filed executed proofs of service of summons and complaint as to Defendants
Salazar Jr. 15 and Salazar Sr., and on February 9, 2024, Plaintiff filed an executed proof of service
of summons 16 and complaint as to Defendant Covarrubias. (Docs. 9-10, 13). 17 On March 6,
2024, the undersigned noted Defendants had failed to timely respond to the 18 complaint and
ordered Plaintiff to apply for entry of default as to all Defendants and to serve a copy 19 of the
Court’s order on Defendants. (Doc. 14) (citing Fed. R. Civ. P. 12(a)(1)(A)). On March 11, 2024,
Plaintiff filed a status report to apprise the Court of recent communications between its 21 counsel
and Defendants. (Doc. 16). Counsel for Plaintiff represented that she had spoken with 22
Defendant Salazar Jr. by telephone several times and all parties held a teleconference on March 4,
23 2024, during which Plaintiff explained to Defendants that they were in default and Defendant
24 Covarrubias asserted he intended to obtain counsel but needed 90 days to do so. (Id. at 2).
Further, 25 26 2 The undersigned incorporates by reference the background section of the Court’s
August 27 19, 2024, findings and recommendations, which more comprehensively details
Plaintiff’s allegations and this action’s procedural history. See (Doc. 32 at 2-7); (Doc. 35) (order
adopting in 1 Defendants reportedly informed Plaintiff’s counsel that they would file with the

Court a request for 2 more time or a stay to obtain counsel and respond to the complaint. (Id.). The next day, Plaintiff 3 filed a request for entry of default as to all Defendants. (Doc. 19). On March 13, 2024, the Clerk 4 of the Court entered defaults against all Defendants. (Docs. 20-22). On April 12, 2024, Plaintiff 5 filed an unopposed motion for default judgment against Defendants. (Doc. 24). 6 The Court convened for hearing on Plaintiff's motion on May 22, 2024. (Docs. 25-26). 7 Counsel Roshni Shikari and Robert Fuentes appeared on behalf of Plaintiff via videoconference. 8 (Doc. 25). Defendants appeared in-person and pro se (marking their first appearance in this action). 9 (Id.). Anna Covarrubias, a relative of Defendant Covarrubias, also attended the hearing and 10 appeared to assist Defendants with English-to-Spanish interpretation. (Id.). Defendants confirmed 11 their addresses and were advised by the Court of the procedural posture of the case including the 12 entries of default against them. (Doc. 26). The Court admonished Defendants of their duty as pro 13 se parties to review and comply with the Court's Local Rules unless and until an attorney appeared 14 on their behalf. (Id.). Plaintiff's motion was argued, and the undersigned thereafter directed 15 Plaintiff to file supplemental briefing regarding the relief requested. (Id.). 16 At the conclusion of the hearing, Defendants requested additional time to retain counsel. 17 (Id.). The undersigned noted that Defendants had already been afforded ample time and 18 opportunities to seek out and retain counsel, noting in particular that Defendant Salazar Jr. had 19 voiced to Plaintiff his interest in retaining counsel as early as October 2023 (see Doc. 5) and that 20 Defendant Covarrubias similarly had expressed to counsel for Plaintiff his intention to obtain 21 counsel some two-and-one half months earlier (see Doc. 16). Accordingly, the undersigned ordered 22 that within 14 days, Defendants file either a notice of attorney appearance on their behalf, a notice 23 of intent to continue to represent themselves pro se, or a notice of request demonstrating good cause 24 for additional time within which to retain an attorney. (Doc. 26). The undersigned admonished 25 Defendants that, if they sought additional time, the undersigned would grant an extension and 26 expect that the Defendants "move" expeditiously on any additional time granted and "not delay any 27 further." (Id. tr. 10:55:15 a.m. – 10:55:29 a.m.). 1 Defendant promptly filed a renewed request for an extension of time to retain counsel. 2 (Doc. 27), and on June 6, 2024, the undersigned granted Defendants' motion. (Doc. 29). The 3 undersigned found Defendants had carelessly abdicated their duties under federal law and the 4 Court's local rules and had been generously afforded more than ample time to seek out and retain 5 counsel. (Id. at 2-3). However, the undersigned provided Defendants an additional 21 days to file 6 either (1) notices of appearance of counsel on their behalf, or (2) an opposition to Plaintiff's pending 7 motion for default judgment. (Id. at 3). The undersigned forewarned Defendants that the Court 8 would not entertain any further requests for extensions of time to retain counsel and that the Court 9 would construe their failure to timely oppose Plaintiff's motion for default judgment as a non- 10 opposition. (Id.) (citing Local Rule 230(c)). 11 On June 27, 2024, Defendants filed a second motion for an extension of time to obtain 12 counsel. (Doc. 31). Defendants represented they had located an attorney and had an appointment 13 with Wade Law Group on June 26, 2024, for the

law group to inquire more about their case. (Id.). 14 Defendants requested “additional time for our attorney to study the case and for the hearing to be 15 with adequate information from all parties.” (Id.). 16 Thereafter, following a protracted period of time during which Defendants failed to abide 17 by the Court’s order to file either notices of attorney appearance or an opposition to Plaintiff’s 18 motion for default judgment, on August 19, 2024, the undersigned (1) entered an order denying as 19 moot Defendants’ second motion for an extension of time to obtain counsel, and (2) issued findings 20 and recommendations to grant Plaintiff’s motion for default judgment. (Doc. 32). In relevant part, 21 the undersigned found the record established that Defendants violated the FHA and justified an 22 award of compensatory damages against all Defendants jointly and severally in the amount of 23 \$30,000, punitive damages against Defendant Salazar Jr. in the amount of \$12,500, and punitive 24 damages against Defendant Salazar Sr. in the amount of \$2,500, for a total of \$45,000. (Doc. 32). 25 In support of finding default judgment warranted, the undersigned noted, among other things, that 26 “[a]s of the date of the order – some three months after the motion hearing and the [u]ndersigned’s 27 unequivocal admonishment that Defendants were obligated to participate in this litigation – 1 any answer to the complaint,” and instead, filed a “request for an indefinite extension of time within 2 which to retain counsel.” (Id. at 23). The undersigned also addressed Plaintiff’s various requests 3 for injunctive relief, recommending that the Court: (a) order all Defendants attend a training on the 4 FHA; (b) enjoin all Defendants from violating the FHA; (c) require Defendant Covarrubias to adopt 5 a written policy against sexual harassment for all rental properties he owns, ensure all of his agents 6 are familiar with the requirements of the FHA, and post an “Equal Housing Opportunity” sign in 7 any rental office he or any of his agents may use; and (d) enjoin Defendant Salazar Jr. from 8 contacting or communicating either directly or indirectly with McGinnis. (See id.). The 9 undersigned did not recommend imposition of a separate form of injunctive relief requested by 10 Plaintiff: that Defendant Salazar Jr. “be permanently enjoined from directly or indirectly 11 performing any property management or maintenance responsibilities at any residential property.” 12 (Id. at 24) (quoting (Doc. 24 at 15-16)). 13 Defendants did not file objections or any other response to the findings and 14 recommendations. On October 28, 2024, the assigned district judge entered an order adopting the 15 findings and recommendations in part, granted Plaintiff’s motion for default judgment as modified, 16 and directed the Clerk of the Court to close the case. (Docs. 35, 36). The Court exercised its 17 “flexible” equitable powers to depart from the undersigned’s recommendation as to the injunctive 18 relief provision regarding Defendant Salazar Jr. performing property management services and 19 found that it “will instead limit the ban against Defendant Salazar Jr. performing property 20 management or maintenance services at residential rental properties to ten years.” (Doc. 35 at 4- 21 5). 22 On November 25, 2024, Defendants (through counsel) filed the instant motion to set aside 23 the default judgments entered against them. (Doc. 37). 24 II. Governing Authority 25 Defendants’ motion for relief is brought pursuant to Rule 55(c) and Rule 60(b) of the 26 Federal Rules of Civil Procedure “on the basis of excusable

neglect.” (Doc. 37-1 at 1). “When a 27 defendant seeks relief under Rule 60(b)(1) based upon ‘excusable neglect,’ ‘a court must consider[] 1 that led to the default; (2) whether [it] had [no] meritorious defense; or (3) whether reopening the 2 default judgment would prejudice the other party.” United States v. Aguilar, 782 F.3d 1101, 1105 3 (9th Cir. 2015) (quoting U.S. v. Signed Personal Check No. 730 of Yubran S. Mesle (“Mesle”), 615 4 F.3d 1085, 1091 (9th Cir. 2010)). “This standard ... is disjunctive, such that a finding that any one 5 of these factors is true is sufficient reason for the district court to refuse to set aside the default [or 6 default judgment].” (Id.). 7 Courts must remain mindful that “judgment by default is a drastic step appropriate only in 8 extreme circumstances; a case should, whenever possible, be decided on the merits.” Mesle, 615 9 F.3d at 1095 (quoting Falk v. Allen, 739 F.2d 461, 463 (9th Cir. 1984) (per curiam)). However, in 10 determining whether a party is entitled to relief from judgment, district courts need not explain why 11 a particular case is extreme; instead, they need only faithfully apply the three-factor test as set forth 12 above. Aguilar, 782 F.3d at 1106. 13 III. Discussion 14 A. Culpable Conduct 15 “[A] defendant’s conduct is culpable if he has received actual or constructive notice of the 16 filing of the action and intentionally failed to answer.” Mesle, 615 F.3d at 1092 (emphasis in 17 original) (quoting TCI Grp. Life Ins. Plan v. Knoebber, 244 F.3d 691, 697 (9th Cir. 2001), overruled 18 on other grounds as stated in Delgado v. Dempsey’s Adult Care Homes, LLC, No. 22-15176, 2023 19 WL 3034263, at *1 (9th Cir. Apr. 21, 2023)). “Intentional” conduct in this sense means “willful, 20 deliberate, or...[in] bad faith,” rather than neglectful. TCI Grp., 244 F.3d at 697-98. A 21 “[n]eglectful failure to answer as to which the defendant offers a credible, good faith explanation 22 negating any intention to take advantage of the opposing party, interfere with judicial decision- 23 making, or otherwise manipulate the legal process is not ‘intentional.’” (Id. at 697). 24 Where, as here, the defaulting party is not sophisticated—for instance, “is not a lawyer and 25 that ... was unrepresented at the time of the default”—a failure to answer is intentional only if the 26 party “acted with bad faith, such as an ‘intention to take advantage of the opposing party, interfere 27 with judicial decisionmaking, or otherwise manipulate the legal process.’” Mesle, 615 F.3d at 1092 1 Defendants contend that their delay in responding to the action was not culpable because it 2 “was not egregiously long” as Defendants “were not even aware of the lawsuit ... until they 3 received notice of the default” and Defendants’ delay “in finding proper representation” does not 4 “negatively impact the judicial proceedings[.]” (Doc. 37-1 at 5). Defendants further contend that 5 they have acted in good faith and that they are not at fault as “they have been unsuccessful in finding 6 sufficient representation.” (Id.). Defendants contend that their “lack of awareness of the pending 7 case against them” and “of the legal system” and their limited English proficiency and 8 comprehension “all come together to form a basis for why Defendants’ neglect in answering this 9 action” constitutes excusable neglect. (Id.). 10 Plaintiff contends Defendants are culpable for their failure to respond to the complaint 11 because Defendants have falsely asserted in their declarations that “they became aware of the 12 lawsuit in May 2024 when they received notice of the motion for default judgment,” given that the 13 “Salazars were served the summons and

complaint in November 2023 ... and Covarrubias was 14 served in February 2024[.]” (Doc. 39 at 3). Plaintiff further argues that Defendants’ “more than 15 five-month delay – from the Court’s June 6, 2024 order [extending Defendants’ time to obtain 16 counsel] to Defendants’ motion [to set aside] filed on November 25, 2024 – cannot be deemed 17 excusable neglect.” (Id. at 4). Plaintiff also asserts “[t]he circumstances instead indicate a 18 deliberate and willful failure on part of Defendants to timely defend themselves in this suit” as 19 Defendants were able to follow the Court’s directives following the May 22, 2024, hearing in timely 20 filing a request for extension of time to obtain counsel. (Id. at 3-4). 21 The undersigned finds Defendants’ assertion that their delay in participating in this action 22 “was not egregiously long” to be without merit. Plaintiff is correct that Defendants’ argument and 23 sworn attestations that they purportedly were unaware of this case until May 2024 (Doc. 37-1 at 5;

24 Docs. 37-3, 37-4, 37-5 at ¶ 5) is false. Defendant Salazar Jr. was aware of and spoke to counsel for

25 Plaintiff about the lawsuit as early as October 2023 (see Doc. 5) and Defendant Covarrubias 26 likewise acknowledged his awareness of the lawsuit as early as February 2024 (see Doc. 16). In 27 early-March 2024, all Defendants were served notice that the Court had directed Plaintiff to apply 1 with Defendants on March 4, 2024, counsel for Plaintiff reasonably agreed to support Defendants’ 2 request for time within which to seek to retain counsel. (Doc. 17). 3 However, despite their assurances to counsel for Plaintiff on March 4, 2024, that they would 4 respond to the complaint and seek from the Court additional time, Defendants neither retained 5 counsel nor sought relief from the Court. Beginning with their first appearance in the action at the 6 hearing on Plaintiff’s motion for default judgment (May 22, 2024) and on two occasions thereafter, 7 the undersigned admonished Defendants of their duty to actively participate in this action. At the 8 motion hearing, the Court instructed Defendants regarding their duty as pro se parties to review and 9 comply with the Court’s Local Rules unless and until an attorney appeared on their behalf, to timely 10 file either a notice of attorney appearance on their behalf, a notice of intent to proceed pro se, or a 11 notice of request demonstrating good cause for additional time within which to retain an attorney, 12 and that the Court expected Defendants “move” on the additional time granted and “not delay any 13 further.” (Doc. 26). Following the Court’s June 6, 2024, extension of time to obtain counsel, the 14 Court admonished Defendants that they had carelessly abdicated their duties under federal law and 15 the Court’s local rules despite the generous time afforded to retain counsel and Defendants were 16 forewarned no further requests for extension of time would be entertained and the failure to oppose 17 Plaintiff’s motion would be construed as a non-opposition. (Doc. 29). On August 19, 2024—more 18 than three months after the motion hearing and the undersigned’s numerous admonishments to 19 participate in this litigation—Defendants still had failed to file notices of attorney appearance or 20 oppositions to Plaintiff’s motion or any answer to the complaint. (Doc. 32). Given Defendants’ 21 conduct, the undersigned entered findings and recommendations to grant Plaintiff’s motion for 22 default judgment. (Id.).

Defendants failed to file objections to the findings and recommendations 23 or any other response to the action within the time allotted and the Court thereafter adopted the 24 findings and recommendations in part and granted Plaintiff's motion for default judgment as 25 modified. (Doc. 35). 26 Under these circumstances, Defendants' characterization of their conduct as merely 27 excusably neglectful is baseless. First, Defendants had notice of the commencement of this lawsuit 1 throughout their communications with counsel for Plaintiff. Even after repeated admonishments 2 by the Court that they were obligated either to diligently seek representation by counsel or to 3 comply with their obligations as pro se parties to actively defend the case (see supra), Defendants 4 abdicated. See *Meadows v. Dominican Republic*, 817 F.2d 517, 521 (9th Cir. 1987) ("A defendant's 5 conduct is culpable if he has received actual or constructive notice of the filing of the action and 6 [intentionally] failed to answer," such as where he was "fully informed of the legal consequences 7 of failing to respond"). Second, under these circumstances, Defendants' protracted delay in failing 8 to abide by their expressed intention to seek out counsel and participate in the litigation (extending 9 for more than a year prior to the Court's entry of default judgment, see Doc. 5) is consistent with 10 an intention to interfere with judicial decisionmaking and otherwise manipulate the legal process 11 See *Mesle*, 615 F.3d at 1092 (reiterating that conduct is culpable where there is no explanation of 12 the default "inconsistent with a devious, deliberate, willful, or bad faith failure to respond"). 13 Given Defendants' delay, failure to adhere to the Court's orders and the local rules, and 14 baseless declarations that they did not have notice of the suit against them until May 2024, the 15 undersigned concludes Defendants' conduct is culpable such that their failures to participate in this 16 action appear willful or in bad faith. *TCI Grp.*, 244 F.3d at 697-98. Thus, this factor weighs against 17 setting aside the default judgment. 18

B. Meritorious Defense 19 The undersigned's finding that Defendants acted culpably relieves the Court of having to 20 consider the existence of a meritorious defense or prejudice to Plaintiff. *Brandt v. Am. Bankers 21 Ins. Co. of Fla.*, 653 F.3d 1108, 1111 (9th Cir. 2011) (noting "the well-established proposition that 22 a finding of culpability on the part of a defaulting defendant is sufficient to justify the district court's 23 exercise of its discretion to deny relief from a default judgment"); *Meadows*, 817 F.2d at 522 24 (same). But here, Defendants' failure to identify any meritorious defense further supports the 25 undersigned's recommendation that the default judgment against them should remain intact. 26 In order to have an entry of default set aside, a defendant must also present specific facts 27 that would constitute a meritorious defense. *TCI Grp.*, 244 F.3d at 700. The burden on a defendant 1 possibility that the outcome of the suit after a full trial will be contrary to the result achieved by the 2 default." *Haw. v. Carpenters' Tr. Funds v. Stone*, 794 F.2d 508, 513 (9th Cir. 1986) ("Stone"); see 3 *Audio Toys, Inc. v. Smart AV Pty Ltd.*, No. CV 06-6298-SBA, 2007 WL 1655793, at *3 (N.D. Cal. 4 June 7, 2007) (movant "need only assert a factual or legal basis that is sufficient to raise a particular 5 defense; the question of whether a particular factual allegation is true is resolved at a later

stage.”) 6 (citing TCI Grp., 244 F.3d at 700). 7 Defendants contend that applicable affirmative defenses to Plaintiff’s FHA claims include 8 “unintentional or misunderstood behavior or false accusations.” (Doc. 37-1 at 5). Defendants argue 9 that the facts show that Salazar Jr. “expressed mere advances of romantic interest and nothing 10 more” and that he “halted said advances upon” learning the feelings “were not reciprocated.” (Id.). 11 Defendants contend that how McGinnis “perceived these actions is not enough for a sexual 12 harassment claim to be ruled on so hastily.” (Id. at 5-6). 13 Plaintiff contends Defendants have failed to show they have a meritorious defense. (Doc. 14 39 at 5). Plaintiff argues Defendants do not assert any facts that dispute the accuracy of the text 15 messages filed as an exhibit to its motion for default (see Doc. 24-1), which “on their face establish 16 sexual harassment in violation of the Fair Housing Act[.]” (Id.). 17 Here, despite their bare assertion that the affirmative defenses of “unintentional or 18 misunderstood behavior or false accusations” are applicable to them, Defendants have failed to 19 present any facts challenging the veracity of Plaintiff’s claims or otherwise constitute a meritorious 20 defense. Specifically, although each Defendant proffered a sworn declaration in support of their 21 motion to set aside default judgment, in none of those declarations did any Defendant attest that 22 their conduct was unintentional, or misunderstood, or that McGinnis falsely accused them. See 23 (Doc. 37-3, 37-4, 37-5). Nor in all events does their bare argument unsupported by any factual 24 allegation that Defendant Salazar Jr. “halted said advances” upon realizing that the advances were 25 not reciprocated (Doc. 37-1 at 6) constitute a defense. Though the burden on Defendants is not 26 extraordinarily heavy, the Court finds Defendants have failed to show a “factual or legal basis” 27 sufficient to raise a meritorious defense such that this factor weighs against setting aside the default 1 “unsubstantiated general denial did not constitute a meritorious defense” and that they waived their 2 opportunity to present specific facts that would constitute a defense by failing to assert such facts 3 in their briefing to the court) (citations omitted); Audio Toys, Inc., 2007 WL 1655793, at *3. 4 In short, because Defendants failed to identify any potentially viable defenses, “nothing but 5 pointless delay can result from reopening the judgment.” TCI Grp., 244 F.3d at 697. 6 C. Prejudice 7 “To be prejudicial, the setting aside of an entry of default must result in greater harm than 8 simply delaying the resolution of the case.” TCI Grp., 244 F.3d at 701 (quoting Falk, 739 F.2d at 9 463); Thompson v. Am. Home Assur. Co., 95 F.3d 429, 433-34 (6th Cir. 1996). “Merely being 10 forced to litigate on the merits cannot be considered prejudicial” for purposes of setting aside the 11 default. TCI Grp., 244 F.3d at 701. Rather, the standard is “whether [a plaintiff’s] ability to pursue 12 his claim will be hindered.” Falk, 739 F.2d at 463; see Thompson, 95 F.3d at 433-34 (to be 13 considered prejudicial, “the delay must result in tangible harm such as loss of evidence, increased 14 difficulties of discovery, or greater opportunity for fraud or collusion”). 15 Defendants contend that Plaintiff will not suffer prejudice if their motion to set aside is 16 granted and “even if there is prejudice, it is far outweighed by the prejudice Defendants[] will suffer 17 if default is not set aside” as Defendants “will almost certainly be bankrupt for claims that are not 18 as factually true” as Plaintiff alleges. (Doc. 37-1 at 6).

Defendants contend that if the default is set aside, McGinnis “merely carries on without the handsome judgment that a default in this action would grant her. (Id.). Plaintiff argues it will be prejudiced if the default judgment is set aside because it “will afford Defendants the opportunity to move and hide assets to evade enforcement of the judgment[.]” (Doc. 39 at 5-6) (citing *Franchise Holding II, LLC v. Huntington Restaurants Grp., Inc.*, 375 F.3d 922, 926-27 (9th Cir. 2004)). Plaintiff contends “[t]he Salazars have international connections and travel frequently to Mexico” and Plaintiff therefore has legitimate concerns “about whether Defendants will cooperate with the judgment given their behavior to date.” (Id. at 5). Plaintiff further contends that enforcement of the injunctive relief protects other women from being 1 subjected to sexual harassment in their homes, “will bring closure to Ms. McGinnis, and will protect 2 others from harm.” (Id. at 6). 3 Here, the record is inadequate to support Plaintiff’s assertion that setting aside default 4 judgment would result in prejudice by affording Defendants the opportunity to move and hide assets 5 to evade the enforcement of judgment. The undersigned acknowledges that if the default judgment 6 were set aside and the Court were to reopen this case, Plaintiff would undoubtedly be 7 inconvenienced given it relies on the enforcement of the injunctive relief to “bring closure to Ms. 8 McGinnis” and otherwise would be delayed in the resolution of its case. However, the passage of 9 time and the challenges inherent in evading discovery and enforcing a judgment standing alone 10 ordinarily do constitute cognizable prejudice. See *Francois & Co., LLC v. Nadeau*, 334 F.R.D. 11 588, 599 (C.D. Cal. Apr. 7, 2020). Thus, the undersigned finds this factor neutral to setting aside 12 the default judgment. 13 * * * *

* 14 Having found that two of the three Mesle factors (culpable conduct and lack of meritorious 15 defense) weigh in favor of maintaining the default judgment, the undersigned will recommend that 16 Defendants’ motion be denied. See *Brandt*, 653 F.3d at 1111; *Aguilar*, 782 F.3d at 1105; *Mesle*, 17 615 F.3d at 1091. 18 19 20 Remainder of This Page Intentionally Left Blank 21 22 23 24 25 26 27 1 | IV. Conclusion and Recommendation 2 For the reasons set forth above, the undersigned RECOMMENDS that Defendant’s motion 3 | to set aside default judgment (Doc. 37) be DENIED. 4 These Findings and Recommendations will be submitted to the United States District Judge 5 | assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(). Within 14 days after 6 | being served with a copy of these Findings and Recommendations, a party may file written 7 | objections with the Court. Local Rule 304(b). The document should be captioned, “Objections to 8 | Magistrate Judge’s Findings and Recommendations.” The Court will not consider exhibits attached 9 | to the Objections, but a party may refer to exhibits in the record by CM/ECF document and page 10 | number. A party’s failure to file any objections within the specified time may result in the waiver 11 | of certain rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014). 12 | IT IS SO ORDERED. 'S | Dated: _ April 23, 2025 | hr

14 UNITED STATES MAGISTRATE JUDGE

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