

Honorable Robert J. Bryan

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IN THE UNITED STATE DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

GEORGE DC PARKER II and LORI A.  
PARKER,

Plaintiff(s),

v.

THE SOCIETY FOR CREATIVE  
ANACHRONISM, INC., a/k/a/ "SCA" or  
"SCA, Inc.", et.al,

Defendant(s).

NO. 3:23-cv-05069-RJB

DEFENDANT THE SOCIETY FOR  
CREATIVE ANACHRONISM INC'S  
MOTION TO VACATE DEFAULT

**NOTE ON MOTION DOCKET:  
JUNE 9, 2023**

**I. RELIEF REQUESTED**

Entry of default is an extreme measure and cases should be decided on the merits. Defendant The Society for Creative Anachronism Inc., a/k/a "SCA" or "SCA, Inc." (hereinafter "SCA") seeks relief from this Court from the default entered against it on May 18, 2023 (DKT. 18) in Plaintiffs favor for the SCA's failure to answer the complaint within 20 days. The SCA does not argue that its registered agent was not properly served on April 24, 2023. However, after service was effectuated, a mistake was made by SCA's registered agent who sent the summons and complaint to the wrong address and therefore SCA never received actual notice of the lawsuit

1 until an employee received an electronic alert the day before the answer was due about the  
2 lawsuit. As a result, default was entered three days later. As this motion will demonstrate, good  
3 cause exists for vacating the default and allowing this case to be decided on the merits because  
4 SCA appeared shortly after receiving actual notice of the lawsuit and it has a valid defense to  
5 Plaintiffs' claims.

## 6 II. STATEMENT OF FACTS

7 The Society for Creative Anachronism ("SCA) is a 501(c)(3) non-profit volunteer  
8 educational organization devoted to the research and re-creation of pre-seventeenth century  
9 skills, arts, combat and culture by employing knowledge of history to enrich the lives of participants  
10 through events, demonstrations and other educational activities. See Declaration of Louise Du  
11 Cray, (Du Cray Decl.) ¶ 2.

12 George Parker II and Lori A Parker (Plaintiffs) were members of the SCA. See *Complaint*  
13 *for Civil Case* (Complaint), DKT. 9. They claim in their complaint that the SCA negligently allowed  
14 a hostile work environment to exist at the SCA's activities and otherwise, that SCA allowed  
15 Plaintiffs to be harassed, slandered, and bullied by other members of the SCA organization. *Id.*  
16 at ¶ 46. Plaintiffs claim bullying and harassment occurred on their private Facebook accounts by  
17 others they had not accepted as "friends" and that they were "released" from positions held in the  
18 SCA due to activities that occurred on Facebook. *Id.* Plaintiffs further claim they were not voted  
19 in by the SCA population as Baron and Baroness when they should have been. They claim the  
20 SCA failed to follow policies and protect them. *Id.* Plaintiffs claim emotional injuries, mental  
21 anguish pain and suffering and punitive damages as a result. *Id.* at ¶ 47. Plaintiffs additionally  
22 claim they were unjustly removed from the SCA and that this removal destroyed their medieval  
23 business activities. *Id.* at ¶¶ 49, 53. The SCA denies Plaintiffs claims.

24 Plaintiffs served their complaint on SCA's registered agent, CT Corporation, on April 24,  
25 2023. Du Cray Decl., ¶ 4. The SCA corporation had changed their business address in August

1 of 2021 and their PO Box in January of 2022. Id. The SCA advised CT Corporation of both  
2 changes via email in February of 2022. Id. Unfortunately, neither address was updated CT  
3 Corporation who mailed notices of the service to SCA's old addresses. Id. As a result, the SCA  
4 did not learn about the Parker Complaint, or receive a copy of the Summons and Complaint until  
5 May 14, 2023, when one of its vice presidents received an electronic alert via CourtListener about  
6 this lawsuit. Declaration of Eben Kurtzman (Kurtzman Decl.), ¶ 3. SCA immediately informed its  
7 corporate counsel, who is not licensed in Washington, about the lawsuit and sought guidance  
8 about next steps. *Du Cray Decl.* at ¶ 6 and Kurtzman Decl. at ¶ 3. A clerk's default order was  
9 entered on May 18, 2023. DKT. 18.

10 SCA located competent legal counsel who was able to defend SCA and who filed a notice  
11 of appearance on May 19, 2013. *Du Cray Decl.*, ¶ 6.

### 12 III. ISSUE

13 Whether the SCA has demonstrated good cause for this Court to set aside the default  
14 order entered on May 17, 2023.

### 15 IV. EVIDENCE RELIED ON

16 The SCA relies on this motion, the Declaration of Louise Du Cray, the Declaration of Eben  
17 Kurtzman and the documents attached hereto along with this Court's file.

### 18 V. ARGUMENT AND AUTHORITY

#### 19 A. Good Cause Exists for Vacating the Order of Default.

20 FRCP 55(c) provides:

21 For good cause shown the court may set aside an entry of default  
22 and, if judgment by default has been entered, may likewise set it  
aside in accordance with rule 60(b).

23 FRCP 60(b) provides a party with relief from a final judgment, order or proceeding due to  
24 mistake, inadvertence, surprise or excusable neglect.

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1 The rules for vacating defaults are “remedial in nature and thus must be liberally applied.”  
2 *Community Dental Servs. v. Tani*, 282 F.3d 1164, 1169 (9th Cir. 2002). “[J]udgment by default is  
3 an extreme measure and a case should, whenever possible, be decided on the merits.” *Id.* at  
4 1170.

5 “The good cause standard that governs vacating an entry of default under Rule 55(c) is  
6 the same standard that governs vacating a default judgment under Rule 60(b).” *Franchise Holding*  
7 *II LLC v. Hunting Rest. Group*, 375 F.3d 922, 925 (9th Cir. 2004); *see also TCI Group Life Ins.*  
8 *Plan v. Knoebber*, 244 F.3d 691, 696 (9th Cir. 2001). In particular, “[a] showing of lack of culpability  
9 sufficient to meet the Rule 55(c) ‘good cause’ standard is ordinarily sufficient to demonstrate as  
10 well the ‘excusable neglect’ or ‘mistake’ criteria under Rule 60(b)(1)...” *TCI*, 244 F.3d at 696.

11 In determining whether “good cause” exists, the Court must consider three factors: (1)  
12 whether the defendant’s culpable conduct led to the default; (2) whether the defendant has a  
13 meritorious defense; and (3) whether reopening the default would prejudice the plaintiff. *TCI*, 244  
14 F.3d at 696.

15 **1. The SCA Lacks Culpability.**

16 The first factor in determining good cause is whether the defendant had “culpable  
17 conduct.” In applying the “culpability” and “excusable neglect” standards, the test is whether the  
18 conduct is “willful, deliberate or evidence of bad faith.” *TCI*, 244 F.3d at 697. Under Rule 60(b)(1),  
19 a court may relieve a party of a judgment or order for “mistake, inadvertence, surprise or  
20 excusable neglect.” *Bateman v. United States Postal Service*, 231 F.3d 1220, 1223-24 (9th Cir.  
21 2000). Whether neglect is excusable depends on at least four factors: (1) the danger of prejudice  
22 to the opposing party; (2) the length of the delay and its potential impact on the proceedings, (3)  
23 the reason for the delay; and (4) whether the movant acted in good faith. *Id.*; *see also TCI*, 244  
24 F.3d at 696.  
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1 Here, the SCA did not willfully, deliberately or in bad faith fail to answer Plaintiffs'  
2 Complaint. SCA retained CT Corporation to accept service of all legal filings for SCA and expected  
3 CT Corporation to judiciously provide any such filings to the SCA in time to respond.

4 The SCA moved its corporate offices in August of 2021 and its PO Box in February of  
5 2022. Prior to doing so, the SCA advised all vendors, including CT Corporation of these changes.  
6 Unfortunately, and through no fault of the SCA, CT Corporation failed to make this change  
7 internally and the SCA was not served and did not learn about the Parker Complaint until May 14,  
8 2023, four days before the default was entered on May 18, 2023.

9 Plaintiffs filed their complaint on January 25, 2023, and received approval to proceed in  
10 forma pauperis on April 17, 2023. DKT. 8. Plaintiffs Complaint was thereafter filed on April 17,  
11 2023. DKT. 9. Plaintiffs filed their Affidavit of Service of Summons and Complaint on May 12,  
12 2023, noting service on CT Corporation that was effected on April 23, 2023. DKT. 15. The SCA's  
13 answer to the complaint was due 20 days later, or by May 15, 2023. Plaintiffs brought their motion  
14 for default judgment the following day, on May 16, 2023. See DKT. No. 16. The clerk entered  
15 Default against SCA by minute entry on May 18, 2023. See DKT. 18. This Complaint was filed  
16 less than 37 days ago. Plaintiffs will not be prejudiced by allowing the SCA to answer their  
17 complaint and allowing this matter to move forward now. There will be no impact on the  
18 proceedings. Initial disclosures are not due until July 3, 2023, and the joint status report July 17,  
19 2023. See DKT. 12. SCA is moving to vacate the default within days of the order being entered  
20 and is actively moving to defend this lawsuit. Clearly the SCA has acted in good faith and this  
21 case should now move forward on the merits when it proceeded to defend the matter and filed a  
22 notice of appearance within 24-hours of receiving actual notice of the lawsuit.

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2. **SCA has Meritorious Defenses to Plaintiff's Claims.**

1 The second factor of the "good cause" test is whether the party seeking to overturn the  
2 default can present a meritorious defense. "A defendant seeking to vacate a default must present  
3 specific facts that would constitute a defense, .... [b]ut the burden on a party seeking to vacate a  
4 default judgment is not extraordinarily heavy." *TCI*, 244 F.3d at 700. "The underlying concern is  
5 ... whether there is some possibility that the outcome ... after full trial will be contrary to the result  
6 achieved by the default." *Augusta Fiberglass*, 843 F.2d at 812.

7 Here, there is far more than "some possibility" that the SCA will defeat Plaintiffs claims  
8 and prevail. This is because of the following

- 9 • The allegations raised in Plaintiff's complaint are based entirely on Plaintiff's  
10 accounting of conversations and actions from others involved in the SCA  
11 community whom they have named specifically. See DKT. 9, ¶ 23 & 26. These  
12 individuals are not all identified as officers of SCA and as a result, SCA is not  
13 responsible for the actions of such persons in their personal capacity.
- 14 • Many of Plaintiffs claims as alleged in their complaint occurred on Facebook. See  
15 DKT. 9. Plaintiff Lori Parker claims her privacy settings were not adhered to and  
16 that she was removed from office for refusing to allow other SCA members to  
17 access her Facebook page. See DKT. 9, ¶ 22. Plaintiff George Parker claims he  
18 was attacked and slandered online. The SCA has no control over what happens  
19 on Facebook and what conduct Facebook users choose to engage in while on this  
20 media platform.
- 21 • As part of Plaintiffs' first cause of action in negligence, Plaintiffs claim a hostile  
22 work environment. See DKT. 9, ¶ 46. As mentioned above, SCA is based on  
23 volunteer participation and is not a work environment. The SCA owed Plaintiffs no  
24 duty regarding the comments or actions of Plaintiffs peers in this organization.  
25 Much of the activity complained about in Plaintiffs' complaint is outside of the  
control of the SCA.
- Plaintiffs complain they were not voted into the positions of Baron and Baroness  
by the SCA membership. SCA cannot control the manner in which its members  
vote.
- Plaintiffs default is based, in part, on punitive damages claim which is not viable in  
Washington State for state based causes of action. See DKT. 9, ¶ 55 & 56.

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1 In addition, much of the conduct Plaintiffs identify as constituting their emotional distress  
2 claim appear to have occurred before April 23, 2020, e.g., conduct occurring in between sometime  
3 in January 2017 and March 15, 2020. DKT. 9 ¶¶ 20-32. Conduct occurring before April 23, 2020,  
4 are barred under Washington State's three-year statute of limitations. RCW 4.16.080(2);  
5 *Washington v. Boeing Co.* 105 Wn. App. 1, 18, 19 P.3d 1041 (2000).

6 Third, Plaintiffs' complaint appears to be one of allegations that SCA violated its own rules,  
7 but they have failed to identify what specific rules were violated or how. Court intervention into  
8 the internal affairs of private clubs and organizations is limited to determining whether the club  
9 violates their own rules. *Garvey v. Seattle Tennis Club*, 60 Wn. App. 930, 933-34, 808 P.2d 1155  
10 (1991).

11 The SCA must also conduct discovery in order to verify the factual allegations of Plaintiffs  
12 but it believes it will demonstrate for a jury how all SCA procedures were properly followed and  
13 adhered to. For these reasons, and many others, the SCA will successfully defend this lawsuit.

14 **3. Plaintiffs Cannot Show Prejudice.**

15 The third factor under the "good cause" test is whether vacating the default would  
16 prejudice the plaintiff. "To be prejudicial, the setting aside of a judgment must result in greater  
17 harm than simply delaying resolution of the case. Rather, 'the standard is whether [plaintiffs] ability  
18 to pursue his claim will be hindered.'" TCI, 244 F.3d at 701, quoting *Falk v. Allen*, 739 F.2d 461,  
19 463 (9th Cir. 1984). "A default judgment gives the plaintiff something of a windfall by sparing her  
20 from litigating the merits of her claim because of her opponent's failure to respond; vacating the  
21 default judgment merely restores the parties to an even footing in the litigation." *Id.*

22 Here, if the default is not vacated, Plaintiffs' will enjoy a windfall of \$150,000.00, some of  
23 which is for alleged punitive damages, or to punish the SCA for alleged actions of members over  
24 whom the SCA has no control. Other than having to now prove their allegations, Plaintiffs cannot  
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1 show any prejudice if this Court sets the default aside.

2 **V. CONCLUSION**

3 The entry of default in this case is not warranted. The SCA did not willfully, deliberately or  
4 in bad faith fail to answer Plaintiffs' complaint. As demonstrated by this motion, the complaint was  
5 forwarded to wrong address for the SCA. SCA entered a notice of appearance immediately after  
6 it learned about this lawsuit. It then brought this motion to vacate default less than three court  
7 days after entry of default. The SCA has demonstrated defenses to the claims made in this lawsuit  
8 and has also demonstrated that Plaintiffs will not be prejudiced simply because they would now  
9 have to prove the allegations asserted in their complaint and the damages they allege to have  
10 sustained. For these reasons, default should now be vacated.

11 DATED this 23rd day of May, 2023.

12 PREG O'DONNELL & GILLETT PLLC

13 By /s/ Justin E. Bolster

14 Justin E. Bolster, WSBA #38198

15 Debra Dickerson, WSBA# 20397

16 Attorneys for Defendant The Society for Creative  
17 Anachronism, Inc., a/k/a/ SCA, Inc.



**DECLARATION OF SERVICE**

I hereby declare that on this day I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the attorneys of record listed below:

**Counsel for Plaintiffs George DC**

**Parker II and Lori A. Parker:**

George DC Parker II  
Lori A. Parker  
10710 199th Street East  
Graham, WA 98338

**Via Messenger**

**Via Facsimile –**

**Via U.S. Mail, postage prepaid**

**Via Overnight Mail, postage prepaid**

**Via Court E-Service or email with recipient's approval**  
***thenorsegypsyforge@gmail.com***

DATED at Seattle, Washington, this 23rd day of May, 2023.

/s/ Justin E. Bolster

Justin E. Bolster, WSBA #38198