

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 09-81088-CIV-HURLEY/HOPKINS

JONATHAN E. PERLMAN,

Plaintiff,

v.

GEORGETTE DELISFORT.

Defendant.

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**ORDER GRANTING DEFENDANT'S MOTION TO VACATE ENTRY OF  
DEFAULT AND RE-SETTING TRIAL DATE AND PRETRIAL DEADLINES**

THIS CAUSE comes before the court upon defendant's motion to vacate default [DE # 10]. In support of this motion, defendant maintains that she has not been served with process and that she learned of this lawsuit for the first time when she received plaintiff's motion for default judgment on February 4, 2010. Plaintiff asserts that he properly served defendant with process and objects to the relief sought by defendant.

As an initial matter, the court notes that according to the record evidence, plaintiff perfected service upon defendant pursuant to Fed. R. Civ. P. 4(e)(2) on November 11, 2009 by leaving a copy of the complaint and summons at her doorsteps after she refused to answer her door. DE # 6; *see Novak v. World Bank*, 703 F.2d 1305, 1310 n.14 (D.C. Cir. 1983) ("When a person refuses to accept service, service may be effected by leaving the papers at a location, such as on a table or on the floor, near that person."). Since defendant failed to respond to the complaint within twenty days, a default was properly entered against her.

A properly entered default may be set aside only "for good cause." Fed. R. Civ. P. 55(c).

Good cause “is not susceptible to a precise formula, but some general guidelines are commonly applied.” *Compania Interamericana Export-Import, S.A. v. Compania Dominicana De Aviacion*, 88 F.3d 948, 951 (11th Cir. 1996). These guidelines instruct the court to consider “whether the default was culpable or willful, whether setting it aside would prejudice the adversary, and whether the defaulting party presents a meritorious defense.” *Id.*

The court is satisfied that the instant motion demonstrates good cause justifying the vacatur of the default. Foremost, it appears that defendant intends to defend against this lawsuit, and plaintiff would suffer no unfair prejudice were defendant permitted to do so. Moreover, there is a strong preference that cases be determined on the merits whenever possible. *See Owens v. Benton*, 190 Fed. App’x 762, 763 (11th Cir. 2006). Finally, just because plaintiff properly served defendant with process by leaving the complaint at her doorsteps does not mean that she was aware of this suit. To the contrary, the court credits her assertion that she learned of this suit for the first time on February 4, 2010, when she received a copy of plaintiff’s motion for entry of default.

Accordingly, it is hereby **ORDERED** and **ADJUDGED** that:

1. Defendant’s motion to vacate default [DE # 10] is **GRANTED**.
2. The default entered by the Clerk on January 29, 2010 [DE # 8] is **VACATED**.
3. Plaintiff is directed to mail defendant a copy of the complaint to defendant at 2108 New London PL, Snellville, GA 30078 via First-Class and Certified Mail within **ONE (1) DAY** of entry of this order.
4. Defendant **SHALL** file her answer to the complaint by **April 21, 2010**. No extensions will be given absent exceptional circumstances.
5. This case is **RE-SET** for trial on the **October 2010 Trial Calendar** which commences on **Tuesday, October 5, 2010**. Counsel for all parties shall appear at a

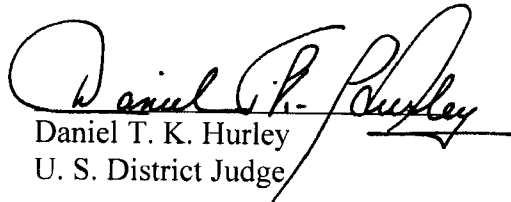
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calendar call commencing at **2:00 p.m. on Monday, October 4, 2010**, in courtroom five at the federal courthouse, 701 Clematis Street, West Palm Beach, Florida.

6. Pretrial discovery shall be conducted in accordance with Local Rule 16 .1 and Rule 26(a) of the Federal Rules of Civil Procedure. In light of the extension of trial date, pretrial discovery deadlines will be adjusted to comport with the new calendar call date for this case. Unless amended by subsequent order, the following deadlines shall apply:

<u>Mediation Conference</u>	60 days before calendar call
<u>Rule 26(a)(3) Witness and Exhibit Disclosures</u>	30 days before calendar call
<u>Discovery Cutoff</u>	10 days before calendar call
<u>Motions in Limine</u>	5 days before calendar call
<u>Pretrial Stipulation</u>	5 days before calendar call
<u>Voir Dire Questions</u>	First day of jury trial
<u>Jury Instructions</u>	First day of jury trial
<u>Proposed Findings of Fact &amp; Conclusions of Law</u>	First day of non jury trial

**DONE** and **SIGNED** in Chambers at West Palm Beach, Florida, this 31<sup>st</sup> day of March, 2010.

  
Daniel T. K. Hurley  
U. S. District Judge

*Copies provided to counsel of record and all pro se litigants*