IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

PHOEBE MORGAN, individually and as parent and natural guardian for A.M., Plaintiff,	:	CV-22-01100
vs.	:	
KELTON COMPTON, Defendant.	:	CIVIL ACTION - LAW

OPINION AND ORDER

AND NOW, this 20th day of March 2024, upon consideration of the Defendant's Petition to Open Default Judgment, it is hereby ORDERED and DIRECTED that the Petition to Open Default Judgment is GRANTED for the reasons set forth below.

I. BACKGROUND

Phoebe Morgan (hereinafter "Plaintiff") commenced this action by Complaint filed November 8, 2022, against Kelton Compton (hereinafter "Defendant). Plaintiff alleges, under Count I, "Battery," that during approximately 2019 to 2020, when the Plaintiff and the Defendant were in a romantic relationship and the Defendant lived with the Plaintiff and the Plaintiff's daughter, A.M., the Defendant sexually assaulted A.M. Under Count II, "Invasion of Privacy," Plaintiff alleges that Defendant posted intimate photographs of the Plaintiff on various websites, sent threatening and harassing e-mail messages to the Plaintiff, and sent a Google Album to the Plaintiff containing intimate photographs and derogatory messages. Under Count III, "Harassment," the Plaintiff alleges that the above-mentioned conduct constitutes harassment.

Plaintiff mailed the Complaint to the Defendant by certified mail, on November 8, 2022. The November 8, 2022, certified mail was returned via the postal service indicating that the certified mail was "UNCLAIMED." Plaintiff mailed a copy of the Complaint to the Defendant by ordinary mail, which was not returned. On December 19, 2022, the Plaintiff mailed to the Defendant a notice of intention to take judgment by default by first-class mail and certified mail, return receipt requested. The face of the envelope of the December 19, 2022, certified mail indicates the word "UNCLAIMED," bolded and in red. When no responsive pleading was filed, Plaintiff filed a Praecipe for Entry of Judgment by Default for Failure to Plead on January 18, 2023, and indicated that Plaintiff requests damages in excess of $50,000, plus punitive damages, to be determined by a trial on

damages. The Prothonotary duly entered a default judgment against Defendant on the same day in the amount of $0.00. Plaintiff mailed the Praecipe to Defendant by certified mail and first-class mail.

Plaintiff subsequently filed a Motion seeking the scheduling of a trial limited to the issue of damages. At a conference on that Motion held on January 4, 2024, Defendant attended by telephone and advised the Court that the Defendant intended to defend the matter. The Court noted that the Defendant had not entered an appearance personally or through counsel, and that Defendant never sought relief from the default judgment entered on January 18, 2023. The Court Ordered that if the Defendant intends to seek relief, the Defendant must file a petition to open or strike the judgment. The Defendant filed a Petition to Open Default Judgment (hereinafter "Petition") on February 5, 2024. The Court conducted a hearing on February 28, 2024. Plaintiff and Plaintiff's counsel attended that hearing in person. Defendant attended via Zoom Technologies without counsel. At the hearing, Defendant testified that he received the Complaint by mail at some time in December, 2022, and that he mailed some written response in the form of a letter to the courthouse to the Courthouse, thereafter. The Court notes that no written document of any nature from the Defendant was included in the Court file. The Court further notes that the Defendant never appeared in writing in this matter, prior to his *pro se* Petition to Open the Default Judgment. The Defendant appeared *pro se* by telephone at the January 4, 2024, hearing and by Zoom technology at the February 28, 2024, hearing.

II. APPLICABLE RULES OF CIVIL PROCEDURE

The Pennsylvania Rules of Civil Procedure, Rule 1007 (Commencement of Action), permit a plaintiff to commence an action against a defendant by complaint. Rule 404 (Service Outside the Commonwealth) permits a plaintiff to serve original process "outside the commonwealth within ninety days of the issuance of the writ or the filing of the complaint…by mail in the manner provided by Rule 403." Rule 403 (Service by Mail) states that "If a rule of civil procedure authorizes original process to be served by mail, a copy of the process shall be mailed to the defendant by any form of mail requiring a receipt signed by the defendant or his authorized agent. Service is complete upon delivery of the mail." Rule 403(2), however, indicates that "If the mail is returned with notation by the postal authorities that it was unclaimed, the plaintiff shall make service by another means pursuant to these rules." Rule 1037 (Judgment Upon Default or Admission. Assessment of

Damages) requires the Prothonotary, in appropriate circumstances and upon praecipe of the plaintiff, to enter judgment by default against a defendant when the defendant has not timely filed a responsive pleading. Prior to entry of default judgment, Rule 237.1 (Notice of Praecipe for Entry of Judgment of Non Pros for Failure to File Complaint or by Default for Failure to Plead) requires a plaintiff, after the defendant's failure to plead to the complaint and at least ten (10) days prior to entry of judgment by default, to certify that he has served upon the defendant written notice of his intention to seek entry of default judgment, and "[t]he notice and certification required by this rule may not be waived." Upon entry of judgment by default, a defendant may file a petition for relief therefrom pursuant to Rule 237.3 (Relief from Judgment of ***Non Pros*** or by Default).

III. ANALYSIS

As examined by the Honorable Eric R. Linhardt in his opinion in *Nextgen Medstaff, LLC v. Embassy Loyalsock, LLC*, "A petition to open a default judgment and a petition to strike a default judgment seek distinct remedies and are generally not interchangeable." *Nextgen Medstaff, LLC v. Embassy Loyalsock, LLC*, Lycoming County docket number 22-01029 (Lyco. Cnty. 2023) (quoting *Stauffer v. Hevener*, 881 A.2d 868, 870 (Pa. Super. Ct. 2005)). Furthermore, "[a] petition to open a default judgment appeals to the court's equitable powers and will [generally] be granted or denied within the court's sound discretion." *Id*. at 2 (citing *Graziani v. Randolph*, 856 A.2d 1212, 1223 (Pa. Super. Ct. 2004), *alloc. denied*, 875 A.2d 1075 (Pa. 2005)); *but see* Pa. R.C.P. 237.3(b)(2) (indicating that a default judgment must be opened if the petition to open is filed within ten days after entry of the default judgment and if the defendant states a meritorious defense).

A. Improper service of the Complaint.

The certified mail sent to the Defendant by the Plaintiff were returned as "unclaimed," rather than "refused." For that reason, Plaintiff was not free to serve the Complaint only by ordinary mail. Before this Court can proceed through the tripartite test to determine whether a petition to open default judgment may be granted, the trial court is required to first address—as a threshold matter—the issue of improper service. *Digital Communications Warehouse, Inc. v. Allen Investments, LLC*, 223 A.3d 278, 288 (Pa. Super. Ct. 2019). Proper service is necessary for the court to adjudicate a matter, because absent proper service the court lacks jurisdiction—power—over the defendant.

> Service of process is a mechanism by which a court obtains jurisdiction of a defendant, and therefore, the rules concerning

> service of process must be strictly followed. Without valid service, a court lacks personal jurisdiction of a defendant and is powerless to enter judgment against [the defendant].
>
> Thus, improper service is not merely a procedural defect that can be ignored when a defendant subsequently learns of the action....However, the absence of or a defect in a return of service does not necessarily divest a court of jurisdiction of a defendant who was properly served. [T]he fact of service is the important thing in determining jurisdiction and...proof of service may be defective or even lacking, but if the fact of service is established jurisdiction cannot be questioned.

Penn National Mutual Casualty Ins. Co. v. Phillips, 276 A.3d 268, 274 (Pa. Super. Ct. 2022) (citing *Cintas Corp. v. Lee's Cleaning Services, Inc.*, 700 A.2d 915, 917-18 (Pa. 1997).

Proper service to defendants who reside outside of the Commonwealth are governed by Rule 404 and Rule 403. While a plaintiff is permitted under Rule 403(1) to serve a defendant by ordinary mail if the mail is returned by the postal authorities with the notation "refused," Rule 403(2) specifically states that "If the mail is returned with notation by the postal authorities that it was unclaimed, the plaintiff shall make service by another means pursuant to these rules." As stated in *Kucher v. Fischer*, 167 F.R.D. 397 (E.D. Pa. 1996) on the nature of Rule 403:

> Pennsylvania law authorizes service by ordinary mail upon satisfaction of the following steps: (1) the mailing of the original process to the defendant by a form of mail requiring a receipt, such as certified or registered mail; (2) the return of that mail impressed with a notation by the postal authorities that the mail had been "refused"; and (3) the re-mailing of the "refused" mail to the defendant by ordinary mail. *See* Pa.R.Civ.P. 403.1…. A notation by the postal authorities that certified or registered mail went "unclaimed" rather than "refused" is generally insufficient to satisfy the requirements of service by ordinary mail under Pennsylvania law. *National Expositions, Inc. v. DuBois*, 97 F.R.D. 400, 403 (W.D.Pa.1983); *see also Carson v. Carson*, 28 Pa.D. & C.3d 281 (1983) (same).

Kucher v. Fischer, 167 F.R.D. 397, 397-398 (E.D. Pa. 1996).

The thoughtful Opinion of Judge Smith of the Court of Common Pleas of Lycoming County in the matter of *Carson v. Carson*, 1983 WL 242 (Lycoming Cnty. 1983) persuasively explains the difference between "unclaimed" and "refused" mail:

> [T]he word "unclaimed" is an ambiguous word, not as susceptible to a clear interpretation as the word "refused". The word "refused" indicates that an employee of the postal service presented the certified letter to the defendant, and that the defendant refused to accept the letter. In such a case we can be certain of a number of things: (1) that defendant was presented with the complaint; (2) that defendant was located at the address to which the [] certified letter was directed and (3) that a subsequent letter sent by regular mail would be sent to the address where the defendant would receive it. On the other hand, a letter which is returned with a notation "unclaimed" does not present any such assurances. The difference between the two notations is that the "refused" notation indicates that defendant had some contact with the certified letter, while the "unclaimed" notation does not provide any such guarantee. The court finds that in order to comply with the dictates of due process, service by regular mail under Rule 2079(c)(3) [now Rule 404] may only occur after a certified letter has been returned to the sender with the notation "refused". There are several other alternatives which are available to plaintiff other than those provided by Rule 2079(c)(3) [now Rule 404]. The quickest and easiest way to provide effective service is to have defendant personally served by the sheriff of the county in which he resides. If plaintiff is unable to obtain such personal service because defendant has obstructed or prevented service of process by concealing his whereabouts, plaintiff is entitled to have service as directed by a special order of court.

Carson v. Carson, 1983 WL 242, 2 (Lycoming Cnty. 1983).

In *Harris v. Kaulius*, 1981 WL 882 (Northampton Cnty. 1981), the defendant filed a petition to open and strike the default judgment. Plaintiff's counsel had mailed, via certified mail, a letter containing the complaint to the defendant who lived in New Jersey. The defendant was notified multiple times to retrieve the letter, but failed to do so. *Id*. at 1. Plaintiff's counsel then proceeded to mail the complaint to the defendant by regular mail. *Id*. Noting that the face of the envelope indicated that the letter was "unclaimed," Judge Freedberg of Northampton County granted defendant's petition on the basis that "unclaimed" mail, as opposed to "refused" mail, is "insufficient to authorize service by ordinary mail" under the Pennsylvania Rules of Civil Procedure. *Id*. at 2.

In this matter, Plaintiff mailed the Complaint to the Defendant by first-class mail and certified mail, on November 8, 2022. The face of the envelope of the November 8, 2022, certified mail indicates the word "UNCLAIMED." While Defendant admitted

receipt of the Complaint by first-class mail and alleged that he responded, it is undisputed that Plaintiff's effort to serve the Complaint by certified mail failed, and that the certified mail was returned as "unclaimed" rather than "refused." Thus, the Court lacked jurisdiction—power—over the Defendant, at the time the Prothonotary entered judgment by default. 276 A.3d at 274 ("Service of process is a mechanism by which a court obtains jurisdiction of a defendant, and therefore, the rules concerning service of process must be strictly followed. Without valid service, a court lacks personal jurisdiction of a defendant and is powerless to enter judgment against [the defendant]."). As such, the Court finds that, on the threshold matter of whether service was proper, Plaintiff did not sufficiently serve the Defendant, and therefore Defendant's Petition should be granted. 700 A.2d at 919 ("If valid service has not been made, then the judgment should be opened because the court has no jurisdiction over the defendant and is without power to enter a judgment against him or her.").

B. Opening the Default Judgment.

Our Supreme Court, in *Schultz v. Erie Ins. Exchange*, 477 A.2d 471, 472 (Pa. 1984), reiterated a tripartite test articulated in *Balk v. Ford Motor Co.*, 285 A.2d 128 (Pa. 1971) on the opening of a default judgment:

> A petition to open a judgment is addressed to the equitable powers of the court and is a matter of judicial discretion. The court will only exercise this discretion when (1) the petition has been promptly filed; (2) a meritorious defense can be shown; and (3) the failure to appear can be excused. *Balk v. Ford Motor Co.*, 446 Pa. 137, 140, 285 A.2d 128, 130 (1971).

477 A.2d at 472 (citing *Balk v. Ford Motor Co.*, 285 A.2d 128, 130-131 (Pa. 1971)); *see Ridgid Fire Sprinkler Service, Inc. v. Chaiken*, 482 A.2d 249, 251 (indicating that the matter of granting or denying a petition to open a default judgment is "vested in the sound discretion of the trial court, whose decision thereon will not be reversed in the absence of an abuse of discretion or error of law," and the trial court "acts as a court of conscience" when "determining whether a judgment by default should be opened"); *see also Autologic, Inc. v. Cristinzio Movers*, 481 A.2d 1362, 1364 n. 2 (Pa. Super. Ct. 1984)("[A]ll three parts of the test should be evaluated in light of all the circumstances and equities of the case.").

Even if the Court declines to grant the Defendant's Petition on the threshold matter of service, the Court would grant Defendant's Petition because the Court finds that all three prongs of the *Balk* test are satisfied.

i. The Petition has been promptly filed

Because the Defendant timely filed the Petition and explained to the Court the reason for the delay, the Court finds that the Defendant has promptly filed a petition to open default judgment under the first prong of the tripartite test.

Judge Brobson, in *Alexander v. City of Philadelphia*, 2015 WL 5671558 (Pa. Commw. Ct. 2015), shed light on the first prong of the tripartite test—whether a petition has been promptly filed:

> [I]t is apparent from our review of case law that our courts have not had much occasion to consider petitions to open summary judgments entered in civil actions. Our Supreme Court, in *Lened Homes, Inc. v. Department of Licenses and Inspections of City of Philadelphia*, 386 Pa. 50, 123 A.2d 406 (Pa.1956), a case involving a petition to open a summary judgment entered in a mandamus actioned, analogized the proceeding to a proceeding to open a judgment by default and applied the same principles….While there does not appear to be "a bright line test for determining whether a petition to open judgment has been promptly filed" following the entry of a default judgment, two factors may be considered: "(1) the length of the delay between discovery of the entry of a default judgment and filing the petition to open judgment, and (2) the reason for the delay." *Quatrochi v. Gaiters*, 251 Pa.Super. 115, 380 A.2d 404, 407 (Pa.Super.1977).

2015 WL 5671558 at 2; *see, e.g., US Bank N.A. v. Mallory*, 982 A.2d 986, 995 (Pa. Super. Ct. 2009) ("The law does not establish a specific time period within which a petition to open a judgment must be filed to qualify as timeliness. Instead, the court must consider the length of time between discovery of the entry of the default judgment and the reason for delay.") (quoting *Castings Condominium Association, Inc. v. Klein*, 663 A.2d 220, 223 (Pa. Super. Ct. 1995)).

In *Alexander*, the appellant filed a petition to open judgment after the trial court granted summary judgment in favor of the appellee. 2015 WL 5671558 at 1. The trial court declined to grant that petition on the basis that the appellant failed to file timely and failed to "provide any reason for the twenty-one-year delay in pursuing his civil suit." *Id.*

Here, the Defendant received notice of a default judgment from this Court's Order of December 11, 2023, in which the Court scheduled a status conference to ascertain, among other things, whether the Complaint was served in the manner provided by the Pennsylvania Rules of Civil Procedure. On January 4, 2024, at the time scheduled for a status conference,

counsel for the Plaintiff appeared, and the Defendant appeared by telephone, without counsel. The Defendant advised the Court that the Defendant intended to defend the matter. The Court directed the Defendant to file a petition to open or strike the judgment, consistent with applicable law. Further, the Court noted that, if the Defendant failed to file such a petition, the Court will regard that failure as a waiver by the Defendant to file such a petition. The Defendant subsequently filed a petition to open default judgment (file-stamped January 31, 2024), and a hearing was scheduled on the petition on February 28, 2024. At the February 28, 2024 hearing, Plaintiff and Plaintiff's counsel attended in person, and Defendant attended via Zoom Technologies without counsel. Defendant stated that he had received a copy of the Complaint sometime in December of 2022, and that he subsequently delivered a letter to the courthouse regarding this case. The Defendant further indicated that he had not received any response from the courthouse regarding his case after he supposedly sent the aforementioned letter. The Court notes, however, that no such letter appears in the court files for this case. The Court notes, again, that since the inception of this case, no Praecipe for Entry of Appearance has ever been filed on behalf of the Defendant, and the Defendant appeared *pro se* at both the January 4th and February 28th hearings.

Unlike *Alexander*, where the appellant 1) waited over two decades to file a petition to open judgment and 2) failed to provide any reason for the delay, the Defendant here filed a petition to open judgment on January 31, 2024, after learning of a default judgment against him at the status conference on January 4, 2024. Moreover, the Defendant explained to the Court that he had not received any notice on the status of the case after he purportedly sent a letter to the courthouse after December of 2022. *Id.*; *see Ruczynski v. Jesray Construction Corp.*, 326 A.2d 326, 328 (Pa. 1974) ("Timeliness of a petition to open a judgment, however, is not measured from the time one receives notice of the date of a trial to determine damages. Timeliness is measured from the date that notice is received of the entry of the default judgment."). Furthermore, as the Court has previously noted, because the certified mail sent by Plaintiff to the Defendant were returned as "unclaimed," it was insufficient, as governed by Rule 403(2), for Plaintiff to use ordinary, regular, mail to effectuate proper service on the Defendant, therefore there was improper service of the Complaint.

Because the Defendant timely filed a petition to open judgment and explained to the Court the reason for the delay, the Defendant has satisfied the two factors contemplated by Judge Brobson in *Alexander* regarding the timeliness prong. Therefore, the Court finds that

the Defendant has promptly filed a petition to open default judgment, under the first prong of the tripartite test.

ii. A meritorious defense can be shown.

Because the Defendant alleges some defense—e.g., improper service under Rule 403—in his favor and has testified that he denies the allegations set forth in the Complaint, the Court finds that the Defendant has sufficiently alleged a meritorious defense and therefore satisfied the second prong of the tripartite test.

In *Seeger v. First Union Nat. Bank*, 836 A.2d 163, 166 (Pa. Super. Ct. 2003), our Superior Court provided guidance on the second prong of the tripartite test—the showing of a meritorious defense:

> The requirement of a meritorious defense is only that a defense must be pleaded that if proved at trial would justify relief. The defense does not have to prove every element of its defense[;]…Merely asserting in a petition to open default judgment that one has a meritorious defense is insufficient. *Id*. The moving party must set forth its meritorious defense. *Id*. If any one of the alleged defenses would provide relief from liability, the moving party will have pled a meritorious defense and will have satisfied the third requirement to open the default judgment. *Id*.

836 A.2d at 166; *see, e.g., Boatin v. Miller*, 955 A.2d 424, 429 (Pa. Super. Ct. 2008) (indicating that a petition to open default judgment is not deficient simply because it did not include an answer, and a meritorious defense is present only if the petition includes some defense in the petitioner's favor).

In *Boatin*, the plaintiff filed a complaint, alleging that plaintiff sustained injuries when a taxi cab operated by the defendant negligently collided with another vehicle. 955 A.2d at 425. The defendant neither answered nor responded to the plaintiff's complaint, and a default judgment was entered in favor of the plaintiff. *Id*. The trial court denied the defendants' subsequent petition to open default judgment, and plaintiff argued, on appeal, that the petition to open default judgment was deficient because it lacked a verified copy of the answer. *Id*. at 428. Our Superior Court reversed the denial, stating that it would be an "overly strict interpretation of Rule 237.3" if the Court "look[ed] exclusively at the answer attached to a petition to open a default judgment when deciding if there is a meritorious defense." *Id*. at 429 (quoting *Himmelreich v. Hostetter Farm Supply*, 703 A.2d 478, 479 (Pa. Super. Ct. 1997)).

Here, the Defendant's failure to attach an Answer to his Petition to Open Default Judgment is not a *per se* deficiency for purposes of a meritorious defense. In fact, the Defendant, in his Petition, alleged that the Plaintiff did not properly serve the Complaint under Rule 403. Furthermore, the Defendant, who appeared *pro se* at the hearings of January 4, 2024, and February 28, 2024, indicated vociferously that he intended to defend the matter. The Court also notes that even though the Defendant lives in California—and therefore the Defendant likely receives Lycoming County courthouse mail slower than in-state residents on average—the speed with which the Defendant filed his petition to open default judgment plainly supports his statements in court regarding his intent to defend the case and to dispute the allegations that have been raised in the Complaint.

Because the Defendant alleges some defense—e.g., improper service under Rule 403—in his favor and has repeatedly testified that he intends to defend the matter, the Court finds that the Defendant has sufficiently shown a meritorious defense and therefore satisfied the second prong of the tripartite test.

iii. The failure to appear can be excused.

Because the Defendant was not appropriately served the Complaint and notice of default judgment, the Defendant has a legitimate reason regarding his failure to answer. Therefore, the Court finds that the Defendant's failure to appear can be excused under the final prong of the three-part test.

In *Myers v. Wells Fargo Bank*, N.A., our Superior Court provides guidance on whether the failure to appear can be excused:

> [W]hether an excuse is legitimate is not easily answered and depends upon the specific circumstances of the case. The appellate courts have usually addressed the question of legitimate excuse in the context of an excuse for failure to respond to the original complaint in a timely fashion." *US Bank N.A.*, 982 A.2d at 995 (quotation marks, quotation and citations omitted).
> ….
> …"where the failure to answer was due to an oversight, an unintentional omission to act, or a mistake of the rights and duties of the appellant, the default judgment may be opened." *Flynn v. America West Airlines*, 742 A.2d 695, 699 (Pa.Super.1999) (quotation marks and quotation omitted). *See Hudgins v. Jewel T. Discount Store*, 351 Pa.Super. 329, 505 A.2d 1007 (1986) (holding that where employee sent notice to

> corporate headquarters, but notice was lost in U.S. mail, a legitimate reason was offered).

Myers v. Wells Fargo Bank, 986 A.2d 171, 176-177 (Pa. Super. Ct. 2009).

In *Myers*, the trial court denied the petition to open default judgment after concluding that the defendant did not provide a reasonable excuse or explanation in the defendant's failure to file a responsive pleading. *Id*. at 177. The defendant argued, among other things, that its failure to file an Answer was because of "clerical error and miscommunication" within its organization. *Id*. The record indicated that the plaintiff had a) appropriately served the defendant a Complaint and b) served the defendant a subsequent notice of intent to enter a default judgment when the defendant failed to file an Answer. *Id*. The trial court was unpersuaded, noting that "the Superior Court of Pennsylvania makes a distinction between corporations and laypersons with regard to opening judgments in *Reid v. Boohar*, 856 A.2d 156 (Pa.Super.2004). The *Reid* court emphasized the fact that the appellant was a layperson and not a corporate defendant with the means to monitor its legal claims. As such, we note that Defendant U.S. Bank is a corporation and not a layperson. Moreover, counsel who ultimately filed the Petition had been made aware by Notice prior to the entry of judgment against Defendant U.S. Bank via certified mail on February 21, 2008, and yet, no action was taken until March 19, 2008." *Id*.

Unlike the defendant in *Myers*, the Defendant here is a layperson (not a multi-billion-dollar corporation "with the means to monitor its legal claims"), was not appropriately served under Rule 403, and appears before the Court *pro se*. *Id*. Having neither been properly served the Complaint, nor the ten (10) day notice of default, the Defendant presents a legitimate excuse regarding his failure to appear. *Id*. at 176-177 ("where the failure to answer was due to an oversight, an unintentional omission to act, or a mistake of the rights and duties of the appellant, the default judgment may be opened.")(citing *Flynn v. America West Airlines*, 742 A.2d 695, 699 (Pa. Super. Ct. 1999)). Despite living in California, once the Defendant received information of a default judgment against him from this Court's Order of December 11, 2023—in which the Court scheduled a status conference to ascertain, among other things, whether the Complaint was properly served pursuant to the Rules—the Defendant appeared by telephone on January 4,

2024, at the time scheduled for the status conference. The Defendant advised the Court that the Defendant intended to defend the matter and subsequently filed a Petition to Open Default Judgment on January 31, 2024, per this Court's Order of January 4, 2024,

The Defendant was not properly served the Complaint. The Defendant, who lacks the assistance of counsel, testified that he denies the allegations set forth in the Complaint. Therefore, the Court finds that the Defendant's failure to appear can be excused under the final prong of the tripartite test.

One further consideration is worthy of mention. Plaintiff's default judgment was on the issue of only liability, and thus would require a trial on the issue of damages. The Court anticipates that a trial on all issues will require nearly the same testimony as a trial on the issue of damages alone. Since the Complaint was not properly served, and since the required trial will be somewhat unaffected by the outcome of Defendant's Petition to Open, it appears to this Court that equity requires that the default judgment be opened.

C. Conclusion.

Because A) the Court lacked jurisdiction over the Defendant at the time the Prothonotary entered judgment by default due to improper service of the Complaint, and B) the Court finds that the tripartite test, as reiterated in *Schultz*, has been satisfied, the Court finds that the Defendant's Petition should be granted and the default judgment opened. The Court is mindful that our Supreme Court has held that a trial court has discretion to overlook technical defects in service, provided that the defendant has actual notice and an opportunity to be heard. *McCreesh v. City of Philadelphia*, 888 A.2d 664 (Pa. 2005). As noted by the Honorable Eric R. Linhardt in *Nextgen Medstaff, LLC*, "the Court takes this approach (1) because '[i]n such a sensitive area as the taking of judgment by default, substantial compliance with the rule is required,' (2) because '[t]he law is clear that generally, default judgments are disfavored,' and (3) because although the Court may disregard any error or defect of procedure at any stage of a proceeding, it may do so only when the error or defect does not affect the substantial rights of the parties, which would be the case here were the Court to disregard the errors in procedure noted above and to permit entry of default judgment against the Defendant." *Nextgen Medstaff, LLC v. Embassy Loyalsock, LLC*, Lycoming County docket number 22-01029 (Lyco. Cnty. 2023) (citing Pa. R.C.P. 126; *Gangi v. Delco Cab Co.*, 411 A.2d 798, 800 (Pa. Super. Ct. 1979); and *AmeriChoice Federal Credit Union v. Ross*, 135 A.3d 1018, 1026 (Pa. Super. 2015)).

IV. ORDER

Accordingly, it is hereby ORDERED and DIRECTED as follows:

1. The Defendant's petition to open default judgment (filed January 31, 2024) is hereby GRANTED;
2. The default judgment entered against the Defendant on January 18, 2023 is hereby OPENED;
3. The Prothonotary shall mark the record accordingly; and
4. The Defendant shall file an Answer, with New Matter, if any, within twenty (20) days of the filing of this Order;

IT IS SO ORDERED,

BY THE COURT,

_____
William P. Carlucci, Judge

WPC/aml

cc: Bret J. Southard, Esq
Kelton Compton
1329 North Indian Wells Street, Ridgecrest, CA 93555
Prothonotary