

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GREENLIGHT SYSTEMS, LLC, an Ohio limited liability company; ORBITAL ASSET HOLDINGS, INC., a California Corporation,

Plaintiffs-counter-defendants-Appellants,

v.

ERIK BRECKENFELDER, an individual,

Defendant-counter-claimant-Appellee,

v.

ANDREW D.B. ROWEN,

Counter-defendant.

No. 21-16245

D.C. No. 3:19-cv-06658-EMC

MEMORANDUM*

GREENLIGHT SYSTEMS, LLC, an Ohio limited liability company; ORBITAL ASSET HOLDINGS, INC., a California Corporation,

Plaintiffs-counter-

No. 21-16285

D.C. No. 3:19-cv-06658-EMC

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

defendants,

v.

ERIK BRECKENFELDER, an individual,

Defendant-counter-claimant-
Appellee,

v.

ANDREW D.B. ROWEN,

Counter-defendant-
Appellant.

Appeal from the United States District Court
for the Northern District of California
Edward M. Chen, District Judge, Presiding

Submitted November 17, 2022**
San Francisco, California

Before: LINN,** RAWLINSON, and HURWITZ, Circuit Judges.

Greenlight Systems, LLC, Orbital Asset Holdings, Inc., and Andrew Rowen
(Appellants), appeal the district court's dismissal of their action and entry of a

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable Richard Linn, United States Circuit Judge for the U.S. Court of Appeals for the Federal Circuit, sitting by designation.

default judgment as a discovery sanction. Reviewing for an abuse of discretion, we affirm.

“We review orders on discovery sanctions under [Federal] Rule [of Civil Procedure] 37(b) for an abuse of discretion[.]” *Campidoglio LLC v. Wells Fargo & Co.*, 870 F.3d 963, 975 (9th Cir. 2017) (citation omitted). “A district court abuses its discretion when it fails to apply the correct legal rule or its application of the correct legal rule is illogical, implausible or without support in inferences that may be drawn from facts in the record. . . .” *Medina Tovar v. Zuchowski*, 41 F.4th 1085, 1089 (9th Cir. 2022) (citation omitted).

1. The district court did not abuse its discretion in dismissing Appellants’ action as a discovery sanction. A district court may sanction a party who fails to comply with a discovery order by dismissing the case entirely. *See* Fed. R. Civ. P. 37(b)(2)(A)(v). A district court must weigh five factors in determining whether dismissal is an appropriate sanction, and the district court in this case addressed all five factors in its dismissal order. *See In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006).

When the district court issued its dismissal order, Appellants had failed to produce any discovery despite court orders to do so, had already been given extensions on discovery deadlines, had ignored their obligation to produce Rowen

for a deposition, had failed to appear for a telephone conference, and had not explained why their conduct should be excused. The district court warned Appellants that their case would be dismissed if they did not fulfill their discovery obligations, and it considered less drastic sanctions. *Cf. Valley Eng'rs v. Elec. Eng'g Co.*, 158 F.3d 1051, 1057 (9th Cir. 1998) (commenting that “it is not always necessary for the court to impose less serious sanctions first, or to give any explicit warning”) (citation omitted). Appellants fail to explain how the district court abused its discretion under the facts of this case. *See Medina*, 41 F.4th at 1089.

An evidentiary hearing was not necessary before dismissing Appellants’ case because the district court provided Appellants sufficient opportunity to be heard. *See Paladin Assocs., Inc. v. Montana Pwr. Co.*, 328 F.3d 1145, 1164-65 (9th Cir. 2003) (explaining that an evidentiary hearing is not always required to impose sanctions under Rule 37).

2. Neither did the district court abuse its discretion in entering the default and default judgment against Appellants. A district court may enter a default judgment after considering seven factors, and the district court considered all seven. *See NewGen, LLC v. Safe Cig, LLC*, 840 F.3d 606, 616 (9th Cir. 2016), *as amended*. Once again, Appellants fail to explain how the district court’s analysis of these factors constituted an abuse of discretion. *See Medina*, 41 F.4th at 1089.

In any event, Appellants forfeited any challenge to entry of the default and default judgment because they failed to move to set aside the entry of default or for relief from the judgment. *See Consorzio Del Prosciutto Di Parma v. Domain Name Clearing Co., LLC*, 346 F.3d 1193, 1195 (9th Cir. 2003) (observing that a party must move to set aside the entry of a default or for relief from a default judgment pursuant to Federal Rules of Civil Procedure 55(c) and 60(b) before we will entertain an appeal).

AFFIRMED.