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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

THE PRIVATE CHAUFFEUR
COMPANY, INC.,

Plaintiff,

vs.

BRIAN CHRISTINE,
individually and doing
business as YOUR KEYS OUR
DRIVER,

Defendant.

2:14-cv-08203-RSWL-AS

**ORDER re: Plaintiff's
Motion for Entry of
Default Judgment Against
Defendant Brian
Christine [19]**

Currently before the Court is Plaintiff, The Private Chauffeur Company, Inc.'s ("Plaintiff") Motion for Default Judgment [19], which arises out of Plaintiff's action against Defendant Brian Christine dba Your Keys Our Driver ("Defendant") for federal claims of copyright infringement, trademark infringement, false designation of origin, and

1 cybersquatting. See Compl., ECF No. 1.

2 The Court, having reviewed all papers submitted and
3 pertaining to Plaintiff's Motion [19], **NOW FINDS AND**
4 **RULES AS FOLLOWS:** The Court **DENIES** without prejudice
5 Plaintiff's Motion for Default Judgment [19] due to
6 Plaintiff's inadequate service of process on Defendant.

7 Upon review of Plaintiff's Proof of Service [16],
8 the Court finds that Plaintiff has not adequately
9 served Defendant, which is a prerequisite to personal
10 jurisdiction and, thus, to the entry of default
11 judgment. See Johnson v. Salas, No. 2:11-cv-02153 MCE
12 KJN, 2012 WL 1158856, at *4 (E.D. Cal. Apr. 6, 2012)
13 (stating that "[a]s a preliminary matter, a court must
14 first 'assess the adequacy of the service of process on
15 the party against whom default judgment is
16 requested'").

17 Plaintiff's Proof of Service [16] states that
18 service of process was served at the address, 4635
19 Stoner Avenue, Apartment 3, Los Angeles, California
20 90230, via substituted service to a "Jane Doe." Proof
21 of Serv. 1, ECF No. 16. The process server's
22 Declaration of Due Diligence states that he was unable
23 to effect personal service on Defendant Christine and
24 explains that when he arrived at the 4635 Stoner Avenue
25 residence, he spoke to the manager of the gated
26 apartment complex, and the manager informed the process
27 server that Defendant Christine had moved out of the
28 apartment complex four years ago. Id. at 3. When the

1 process server arrived at the apartment, he spoke with
2 a "Jane Doe" who stated that she had never heard of
3 Defendant Christine. Id. The process server
4 substituted service on the "Jane Doe" occupant "on
5 behalf of Brian Christine, individually and doing
6 business as YOUR KEYS OUR DRIVERS." Id. Plaintiff has
7 not shown any other attempt to properly serve Defendant
8 Christine.

9 "When the party seeking a default judgment has not
10 shown that the defendant has been provided with
11 adequate notice of an action, it is inappropriate to
12 conclude that the defendant 'has failed to plead or
13 otherwise defend' under Federal Rule of Civil Procedure
14 55(a)." Johnson, 2012 WL 1158856, at *4 (internal
15 quotation marks omitted). "'An elementary and
16 fundamental requirement of due process in any
17 proceeding which is to be accorded finality is notice
18 reasonably calculated, under all the circumstances, to
19 apprise interested parties of the pendency of the
20 action and afford them an opportunity to present their
21 objections.'" Produce v. Cal. Harvest Healthy Foods
22 Ranch Mkt., No. C-11-04814 DMR, 2012 WL 259575, at *3
23 (N.D. Cal. Jan. 27, 2012).

24 "For substituted service to be reasonably
25 calculated to give an interested party notice of the
26 pendency of the action and an opportunity to be heard,
27 service must be made upon a person whose relationship
28 to the person to be served makes it more likely than

1 not that they will deliver process to the named party."
2 Id. at *3. Here, the process server's Declaration
3 stated that the "Jane Doe" had "never heard of"
4 Defendant Christine, Proof of Serv. at 3, which
5 certainly does not make it "more likely than not" that
6 the "Jane Doe" would deliver the served documents to
7 Defendant Christine. As such, Plaintiff's service of
8 process is inadequate. Additionally, one of
9 Plaintiff's own exhibits shows that Plaintiff is aware
10 of an alternative address for Defendant Christine: the
11 address listed on Defendant Christine's California
12 driver's license, 1976 Fairway Circle Drive, San
13 Marcos, California 92078. Fibble Decl. in Support of
14 Pl.'s Mot. for Def. J., Ex, 4, ECF No. 19-3. Plaintiff
15 has made no effort to serve Defendant at this address.

16 Because Plaintiff's service of process is
17 inadequate, it is "inappropriate to conclude that the
18 defendant 'has failed to plead or otherwise defend'
19 under Federal Rule of Civil Procedure 55(a)." Johnson,
20 2012 WL 1158856, at *4 (internal quotation marks
21 omitted). As such, the Court **DENIES** Plaintiff's Motion
22 for Default Judgment [19] and **HEREBY SETS ASIDE**
23 Defendant's Default [18], see Fed. R. Civ. P. 55(c).

24

25 **IT IS SO ORDERED.**

26 DATED: April 8, 2014

RONALD S.W. LEW

27

HONORABLE RONALD S.W. LEW
Senior U.S. District Judge

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