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**United States District Court
Central District of California**

10 SUTRA BEAUTY, INC, a California
11 corporation,

12 Plaintiff,

13 v.

14 CARLOS SANTINO SANCHEZ
15 DURAN, an individual, A/K/A CARLOS
16 SANTINO, A/K/A GENOVEVA
17 BAFFANO, A/K/A ANGIE BUFFANO,
18 D/B/A ANGEL BEAUTY SUPPLY;
and DOES 1–20, inclusive,

19 Defendants.

Case No. 2:18-cv-03768-ODW(SSx)

**ORDER DENYING PLAINTIFF'S
MOTION FOR ENTRY OF
DEFAULT JUDGMENT [21]**

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I. INTRODUCTION

Plaintiff Sutra Beauty, Inc. moves for default judgment against Defendant Carlos Santino Sanchez Duran. (ECF No. 21.) For the reasons discussed below, the Court **DENIES** Plaintiff's Motion for Entry of Default Judgment.¹

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II. FACTUAL BACKGROUND

Sutra Beauty ("Sutra") is a manufacturer and distributor of beauty products. (Compl. ¶ 7, ECF No. 1.) On or about January 25, 2018, Sutra entered into a license

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¹ After carefully considering the papers filed in support of the Motion, the Court deemed the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15.

1 agreement with Carlos Santino Sanchez Duran (“Duran”) allowing him to sell Sutra’s
2 products at his place of business. (*Id.* ¶ 8; *id.* Ex. A ¶ 1.1.) The agreement strictly
3 prohibits resale of Sutra’s products online. (*Id.* ¶ 9; *id.* Ex. A, ¶ 1.2.) The license
4 agreement also includes a liquidated damages clause granting Sutra \$100,000 in the
5 event of a breach by Duran. (*Id.* ¶ 18; *id.* Ex. A ¶ 4.1.) On or about April 16, 2018,
6 Sutra discovered that Duran was selling its products online, through Amazon.com,
7 Squareup.com, and Facebook.com. (*Id.* ¶ 11.)

8 On May 4, 2018, Sutra sued Duran for (1) breach of contract, (2) unjust
9 enrichment, (3) statutory and common law unfair competition and business practices,
10 (4) negligent interference with an economic relation, and (5) fraudulent
11 misrepresentation. (*See id.* ¶¶ 16–46.) Sutra requested various monetary and injunctive
12 relief, including liquidated damages of \$100,000 and attorney’s fees and costs. (*Id.* at
13 p. 8.) Duran did not respond to the Complaint, and the Clerk entered default on June
14 15, 2018, upon Sutra’s request. (ECF No. 17.) Sutra now seeks default judgment
15 against Duran, \$100,000 in liquidated damages, and \$6,060 in attorney’s fees and costs.
16 (Mot. for Default J. (“Mot.”), ECF No. 21.)

17 For the reasons discussed below, the Court **DENIES** Sutra’s Motion.

18 **III. LEGAL STANDARD**

19 Federal Rule of Civil Procedure (“FRCP”) 55(b) authorizes a district court to
20 grant a default judgment after the Clerk enters default under Rule 55(a). Fed. R. Civ.
21 P. 55(b). Before a court can enter a default judgment against a defendant, the plaintiff
22 must satisfy the procedural requirements set forth in FRCP 54(c) and 55, as well as
23 Local Rules 55-1 and 55-2. Fed. R. Civ. P. 54(c), 55; C.D. Cal. L.R. 55-1, 55-2. Local
24 Rule 55-1 requires that the movant submit a declaration establishing: (1) when and
25 against which party default was entered; (2) identification of the pleading to which
26 default was entered; (3) whether the defaulting party is a minor, incompetent person, or
27 active service member; (4) that the Servicemembers Civil Relief Act, 50 U.S.C. § 3931,
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1 does not apply; and that (5) the defaulting party was properly served with notice, if
2 required under Rule 55(b)(2). C.D. Cal. L.R. 55-1.

3 If these procedural requirements are satisfied, a district court has discretion to
4 enter default judgment. *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). “[A]
5 defendant’s default does not automatically entitle the plaintiff to a court-ordered
6 judgment.” *PepsiCo, Inc., v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1174 (C.D. Cal
7 2002). In exercising discretion, a court must consider several factors (the “*Eitel*
8 Factors”): (1) the possibility of prejudice to plaintiff; (2) the merits of plaintiff’s
9 substantive claim; (3) the sufficiency of the complaint; (4) the sum of money at stake;
10 (5) the possibility of a dispute concerning material facts; (6) whether the defendant’s
11 default was due to excusable neglect; and (7) the strong policy underlying the FRCP
12 favoring decisions on the merits. *Eitel v. McCool*, 782 F.2d 1470, 1471–72 (9th Cir.
13 1986). Generally, upon entry of default, the defendant’s liability is conclusively
14 established, and the well-pleaded factual allegations in the complaint are accepted as
15 true, except those pertaining to the amount of damages. *TeleVideo Sys., Inc. v.*
16 *Heidenthal*, 826 F.2d 915, 917–18 (9th Cir. 1987) (per curiam) (citing *Geddes v. United*
17 *Fin. Grp.*, 559 F.2d 557, 560 (9th Cir. 1977)).

18 IV. DISCUSSION

19 Although Sutra has complied with the relevant procedural requirements, the *Eitel*
20 factors do not favor entry of default judgment. Further, even were default judgment
21 appropriate, the amount of liquidated damages Sutra seeks is disproportionate,
22 unreasonable, and unsupported by the record.

23 A. Procedural Requirements

24 Sutra has complied with the relevant procedural requirements for the entry of
25 default judgment against Duran by submitting a declaration which states: (1) the Clerk
26 entered default against Duran; (2) the default was entered on the original Complaint
27 filed on May 4, 2018; (3) Duran is not an infant or incompetent person; (4) Duran is not
28 covered under the Servicemembers Civil Relief Act; and (5) although Duran has failed

1 to appear, Stelmach declares that Sutra “is serving” Duran with the Motion for Entry of
2 Default Judgment. (Mot. 4–5; Decl. of Rea Stelmach (“Stelmach Decl.”) ¶¶ 3, 4, 5, 16.)
3 Therefore, Sutra has satisfied the requirements of FRCP 54(c) and 55, as well as Local
4 Rule 55-1.

5 **B. *Eitel* Factors**

6 As a preliminary matter, Sutra asserts five causes of action against Defendant,
7 but its moving papers fail to specify on which cause(s) of action it seeks default
8 judgment. (*See* Compl. ¶¶ 16–46; Mot. 5–7.) Sutra’s arguments address only its breach
9 of contract allegations and Sutra seeks only liquidated damages associated with that
10 claim. (*See generally* Mot.) Accordingly, the Court limits its analysis to the merits of
11 Sutra’s breach of contract claim.

12 *1. Possibility of Prejudice to Plaintiff*

13 The first *Eitel* factor asks whether the plaintiff will suffer prejudice if a default
14 judgment is not entered. *Eitel*, 782 F.2d at 1471. Denial of default leads to prejudice
15 when it leaves a plaintiff without a remedy or recourse for recovery of compensation.
16 *Landstar Ranger, Inc. v. Parth Enter., Inc.*, 725 F. Supp. 2d 916, 920 (C.D. Cal. 2010);
17 *PepsiCo*, 238 F. Supp. 2d at 1177. Duran has failed to appear or participate in this
18 action. Absent entry of default judgment, Sutra is without recourse to recover on
19 Duran’s breach of the license agreement. However, Sutra asserts only vaguely that it
20 sustained damages “by [Duran’s] breach of the Agreements,” and that it “will suffer
21 damages,” but fails to otherwise articulate harm. (Mot. 5; Compl. ¶ 17 (alleging
22 Duran’s violation of the agreement “did harm to [Sutra] and their relations to other
23 vendors and others.”).) Thus, this factor only slightly favors entry of default judgment.

24 *2. Substantive Merits & 3. Sufficiency of the Complaint*

25 The second and third *Eitel* factors “require that a plaintiff state a claim on which
26 the [plaintiff] may recover.” *Philip Morris USA, Inc. v. Castworld Prods., Inc.*, 219
27 F.R.D. 494, 499 (C.D. Cal. 2003) (alteration in original) (quoting *PepsiCo*, 238 F. Supp.
28 2d at 1175). A breach of contract action in California requires a plaintiff to establish:

1 “(1) the existence of the contract, (2) plaintiff’s performance or excuse for
2 nonperformance, (3) defendant’s breach, and (4) the resulting damages to the plaintiff.”
3 *Oasis W. Realty, LLC v. Goldman*, 51 Cal. 4th 811, 821 (2011).²

4 Sutra has alleged sufficient facts to establish each of the requisite elements for a
5 breach of contract claim. First, Sutra alleged the existence of a contract, the license
6 agreement. (Compl. ¶ 8.) Second, although Sutra did not specifically allege its
7 performance under the licensing agreement, it alleged facts indicating that it provided
8 Duran with beauty products for sale at his place of business in accordance with the
9 license agreement’s terms. (*Id.* ¶ 11; Stelmach Decl., Ex. A.) Third, Sutra alleged that
10 Duran breached the license agreement by selling Sutra’s products online. (Compl.
11 ¶ 11.) Finally, Sutra alleged resulting damages, although only vaguely, by alleging
12 Duran’s “violation did harm to [Sutra] and their relations to other vendors and others.”
13 (*Id.* ¶ 17.) Accepting as true the well-pleaded factual allegations in the complaint, Sutra
14 has stated a bare claim for breach of contract. Thus, these factors slightly favor entry
15 of default judgment.

16 4. Amount at Stake

17 The fourth Eitel factor balances the amount of money at stake with the
18 “seriousness of Defendant’s conduct.” *PepsiCo*, 238 F. Supp. 2d at 1176; Eitel, 782
19 F.2d at 1471. The amount at stake must be proportionate to the harm alleged. *Landstar*,
20 725 F. Supp. 2d at 921. “Default judgment is disfavored where the sum of money at
21 stake is too large or unreasonable in light of defendant’s action.” *Truong Giang Corp.*
22 *v. Twinstar Tea Corp.*, No. C 06-03594 JSW, 2007 WL 1545173, at *12 (N.D. Cal.
23 May 29, 2007).

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26 ² The licensing agreement between the parties contains a choice of law clause electing California law
27 to govern the agreement. (*See* Compl., Ex. A § 5.) As such, California law governs the breach of
28 contract claim. Further, a federal court exercising diversity jurisdiction applies the substantive law of
the state in which it sits. *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938). (*See* Compl. ¶ 4 (alleging
diversity jurisdiction under 28 U.S.C. § 1332).)

1 The damages sought here are disproportionate to the harm alleged. Sutra seeks
2 \$100,000 in liquidated damages. (Mot. 9.) This sum is unreasonable in relation to the
3 value of the products involved.³ (See Stelmach Decl., Ex. A (reflecting sales order
4 product prices ranging from \$1.00–\$25.50.) Further, Sutra’s allegations of harm are
5 vague at best. (See e.g., Compl. ¶ 17; Mot. 5.) Sutra fails to indicate the amount of
6 products sold online in violation of the license agreement or the amount of actual
7 damages it suffered. Consequently, this factor weighs heavily against entry of default
8 judgment.

9 *5. Possibility of Dispute*

10 The fifth *Eitel* factor considers the possibility that material facts are in dispute.
11 *PepsiCo*, 238 F. Supp. 2d at 1177. Because the allegations in Sutra’s Complaint are
12 presumed true, Duran’s failure to appear in this action results in a finding that “no factual
13 disputes exist that would preclude entry of default judgment.” *Vogel*, 992 F. Supp. 2d
14 at 1013. Accordingly, this factor favors entry of default judgment.

15 *6. Possibility of Excusable Neglect*

16 The sixth *Eitel* factor considers the possibility that a defendant’s default is the
17 result of excusable neglect. *PepsiCo*, 238 F. Supp. 2d at 1177. No facts before the
18 Court indicate that Duran’s default is due to excusable neglect. Sutra served its
19 Complaint on Duran on May 21, 2018, and filed a Proof of Service on June 11, 2018.
20 (Proof of Service, ECF No. 14.) Sutra also mailed its Motion for Default Judgment to
21 Duran via First Class Mail on July 24, 2018. (See Mot. Proof of Service, ECF No. 21-
22 3.) Duran thus had notice and failed to respond. Because nothing indicates the
23 possibility of excusable neglect, this factor favors entry of default judgment.

24 *7. Policy Favoring Decisions on the Merits*

25 “[D]efault judgments are ordinarily disfavored. Cases should be decided upon
26 their merits whenever reasonably possible.” *Eitel*, 782 F.2d at 1472 (citing *Pena v.*

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28 ³ The licensing agreement limits the liquidated damages provision to damages relating to the retail and resale price of the products. (See Compl. Ex. A § 4.3.)

1 *Seguros La Comercial, S.A.*, 770 F.2d 811, 814 (9th Cir.1985)). However, where the
2 defendant fails to answer the plaintiff’s complaint, “a decision on the merits [is]
3 impractical, if not impossible.” *PepsiCo*, 238 F. Supp. 2d at 1177. Because Duran
4 failed to appear or otherwise respond, a determination on the merits is impossible.
5 Accordingly, this factor does not preclude entry of default judgment.

6 Weighed together, the *Eitel* factors do not support entry of default judgment. As
7 such, the Court denies Sutra’s Motion for Default Judgment.⁴ (ECF No. 21.)

8 **C. Damages**

9 Sutra seeks \$100,000 in liquidated damages, as well as \$5,600 in attorney’s fees
10 and \$460 in costs. (Mot. 9.) Even were default judgment appropriate, the liquidated
11 damages Sutra seeks are disproportionate, unreasonable, and unsupported by the record.

12 A liquidated damages provision is considered valid unless “the party seeking to
13 invalidate the provision establishes that the provision was unreasonable under the
14 circumstances existing at the time the contract was made.” Cal. Civ. Code § 1671(b).
15 Liquidated damages are improper where they “[bear] no reasonable relationship to the
16 range of actual damages that the parties could have anticipated would flow from a
17 breach.” *Ridgley v. Topa Thrift & Loan Ass’n*, 17 Cal. 4th 970, 977 (1998). Where
18 liquidated damages are disproportionate to the anticipated actual damages, they are
19 considered an impermissible penalty. *Id.* The question of whether a liquidated damages
20 clause is enforceable, or an unenforceable penalty, is a question of law for the Court.
21 *See Dollar Tree Stores Inc., v. Toyama Partners LLC*, 875 F. Supp. 2d 1058, 1071 (N.D.
22 Cal. 2012) (citing *Harbor Island Holdings v. Kim*, 107 Cal. App. 4th 790, 794 (2003)).

23 Sutra’s sole argument in support of the \$100,000 liquidated damages provision’s
24 reasonableness is that Duran failed to prove it unreasonable. (*See* Mot. 7–9.) However,
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26 ⁴ Sutra brought five causes of action against Duran in its Complaint, but its Motion for Default
27 Judgment seeks relief on only its breach of contract claim. “[T]he court may direct entry of a final
28 judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines
that there is no just reason for delay.” Fed. R. Civ. P. 54(b). Even were default judgment appropriate,
the Court cannot determine on this record that there is no just reason for delay.

1 in contrast to the \$100,000 sought, the products Sutra sold to Duran under the licensing
2 agreement are valued between \$1.00 and \$25.50 each. (Stelmach Decl., Ex. A
3 (reflecting sales order pricing for products sold to Duran).) The total cost of product in
4 the sales order Sutra submitted is \$785.⁵ (*Id.*) Sutra submitted no other evidence
5 supporting the value of the licensing agreement or anticipated actual damages. Thus,
6 while Sutra seeks \$100,000 in liquidated damages, the actual amount involved appears
7 to be less than one percent of that. Such a gross disparity indicates that the liquidated
8 damages provision operates as a penalty and is unenforceable. *See Dollar Tree Stores*,
9 875 F. Supp. 2d at 1073 (finding unenforceable a liquidated damages provision that
10 “bears no rational relationship to the actual damages.”)

11 Because the liquidated damages provision is disproportionate and bears no
12 reasonable relationship to anticipated actual damages, the Court denies Sutra’s request
13 for \$100,000 liquidated damages.

14 **V. CONCLUSION**

15 For the reasons discussed above, the Court **DENIES** Sutra’s Motion for Entry of
16 Default Judgment without prejudice. (ECF No. 21.) Consequently, the Court **DENIES**
17 Sutra’s request for liquidated damages, attorneys’ fees, and costs. To the extent Sutra
18 desires to reapply for default judgment, it must file its motion no later than November
19 16, 2018. Failure to do so will result in the Clerk of the Court closing the case.

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21 **IT IS SO ORDERED.**

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23 October 15, 2018

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26 **OTIS D. WRIGHT, II**
27 **UNITED STATES DISTRICT JUDGE**

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⁵ Notably, Sutra does not allege that Duran did not pay for these products. (*See Compl.*)