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8 **United States District Court**
9 **Central District of California**
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11 MIKE SARIEDDINE,

12 Plaintiff,

13 v.

14 AREA 51 PHARMS, LLC, JOHN W.
15 SANCHEZ,

16 Defendants.
17

Case No. 2:19-cv-10715-ODW (MRWx)

**ORDER DENYING PLAINTIFF'S
MOTION FOR DEFAULT
JUDGMENT [12]**

18 **I. INTRODUCTION**

19 Plaintiff Mike Saredidine moves for entry of default judgment against
20 Defendants Area 51 Pharms, LLC (“Pharms”) and John Sanchez. (Mot. for Default J.
21 (“Mot.”) 1, ECF No. 12.) For the reasons discussed below, the Court **DENIES**
22 Saredidine’s Motion (“Motion”).¹

23 **II. FACTUAL BACKGROUND**

24 Saredidine claims to own U.S. Registration No. 5,081,681, for the word mark
25 “AREA 51” in connection with liquids for electronic cigarettes (the “681 Mark”).
26 (Compl. ¶ 19.) Pharms allegedly owns U.S. Registration Nos. 5,717,084, 5,717,085,
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28 ¹ After carefully considering the papers filed in connection with 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 and 5,717,114, each for the word mark “AREA 51 PHARMS” in connection with
2 various goods, including “namely, CBD and smoking related products” (collectively,
3 the “PHARMS Marks”). (Compl. ¶¶ 13–15, 21, 26.) Saredidine initiated this action
4 against Pharms and Sanchez for damages and injunctive relief, alleging that their use of
5 the PHARMS Marks infringes his rights over the ’681 Mark under § 32(1) of the
6 Lanham Act and his common-law trademark rights under § 43(a) of the Lanham Act.
7 (Compl. ¶¶ 18–27.) Further, Saredidine seeks an order from this Court directing the
8 U.S. Patent and Trademark Office (“USPTO”) to cancel the registrations of the
9 PHARMS Marks. (Compl. ¶ 35.)

10 Saredidine served a Summons and Complaint on Pharms on December 23, 2019
11 and on Sanchez on January 4, 2020. (*See* Proof of Service, ECF No. 8.) Defendants
12 failed to respond to the Summons and Complaint, and, on February 13, 2020, Saredidine
13 requested entry of default. (*See* Req. for Entry of Default, ECF No. 9.) The Clerk of
14 the Court entered default the next day. (*See* Default by Clerk, ECF No. 10.) On March
15 17, 2020, Saredidine filed his motion for entry of default judgment. (*See* Mot.) On
16 April 22, 2020, the Court took the motion under submission. (ECF No. 13.) However,
17 on May 4, 2020, Defendants attempted to oppose the Motion. (Am. Notice of Mot.
18 (“Opp’n”), ECF No. 16.)

19 III. LEGAL STANDARD

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

3 If these procedural requirements are satisfied, a district court has discretion to
4 enter a default judgment. *See Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980).
5 However, “[a] defendant’s default does not automatically entitle the plaintiff to a
6 court-ordered judgment.” *PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1174
7 (C.D. Cal. 2002) (citation omitted). In exercising its discretion, the Court considers
8 several factors (“*Eitel* Factors”): (1) the possibility of prejudice to the plaintiff; (2) the
9 merits of the plaintiff’s substantive claim; (3) the sufficiency of the complaint; (4) the
10 sum of money at stake; (5) the possibility of a dispute concerning material facts; (6)
11 whether the defendant’s default was due to excusable neglect; and (7) the strong policy
12 favoring decision on the merits. *Eitel v. McCool*, 782 F.2d 1470, 1471–72 (9th Cir.
13 1986) (citation omitted). Generally, upon entry of default by the Clerk, the defendant’s
14 liability is conclusively established, and the well-pleaded factual allegations in the
15 complaint are accepted as true, except those pertaining to the amount of damages.
16 *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917–19 (9th Cir. 1987) (per curiam)
17 (citing *Geddes v. United Fin. Grp.*, 559 F.2d 557, 560 (9th Cir. 1977)).

18 IV. DISCUSSION

19 The Court first considers whether Saredidine satisfies the procedural
20 requirements, then, if so, whether the *Eitel* Factors weigh in favor of an entry of default
21 judgment.

22 A. Procedural Requirements

23 Saredidine declares in his notice of motion: (1) the Clerk entered default against
24 Defendants on February 14, 2020; (2) default was entered based on the Complaint filed
25 on December 18, 2019; (3) Defendants are neither infants nor incompetent;
26 (4) Defendants are not covered under the Servicemembers Civil Relief Act, 50 U.S.C.
27 § 3931, and (5) service of this motion was not required under FRCP 55(b)(2) because
28 Defendants had not appeared in any capacity. (*See* Notice of Mot. 1, ECF No. 12; Decl.

1 of Bruno Tarabichi ISO Mot. (“Tarabichi Decl.”) ¶¶ 2–6, ECF No. 12-2.) Thus,
2 Saredidine satisfies the procedural requirements of Local Rule 55-1.

3 **B. *Eitel* Factors**

4 Once the procedural requirements have been met, district courts consider the *Eitel*
5 Factors in exercising discretion for granting default judgment. *Eitel*, 782 F.2d at
6 1471–72. For the reasons discussed below, the Court finds that the *Eitel* Factors weigh
7 against granting default judgment.

8 *1. Possibility of Prejudice to the Plaintiff*

9 The first *Eitel* Factor considers whether the plaintiff will suffer prejudice if
10 default judgment is not entered. *Eitel*, 782 F.2d at 1471. Denial of default judgment
11 leads to prejudice when it leaves a plaintiff without a remedy or recourse to recover
12 compensation. *See Landstar Ranger, Inc. v. Parth Enter., Inc.*, 725 F. Supp. 2d 916,
13 920 (C.D. Cal. 2010); *PepsiCo*, 238 F. Supp. 2d at 1177. Although Defendants had not
14 participated in this action until after this motion was taken under submission despite
15 proper notice, they do presently appear and show an interest in litigating this matter on
16 the merits. (*See* Opp’n.) Thus, Saredidine is not left without recourse absent a default
17 judgment. Therefore, this factor weighs against default judgment.

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

19 The second and third *Eitel* Factors together “require that a plaintiff state a claim
20 on which the [plaintiff] may recover.” *Philip Morris USA, Inc. v. Castworld Prods.,*
21 *Inc.*, 219 F.R.D. 494, 499 (C.D. Cal. 2003) (alteration in original) (citing *PepsiCo*, 238
22 F. Supp. 2d at 1175.) Although well-pleaded allegations in the complaint are admitted
23 by the defendant’s failure to respond, “necessary facts not contained in the pleadings,
24 and claims which are legally insufficient, are not established by default.” *Cripps v. Life*
25 *Ins. Co. of N. Am.*, 980 F.2d 1261, 1267 (9th Cir. 1992).

26 Saredidine alleges three claims in his complaint: (1) Infringement of a Registered
27 Trademark; (2) Infringement of a Common Law Trademark; and (3) Cancellation of
28 Federal Registration Under Section 1 of Lanham Act. (Compl. ¶¶ 18–35.) All claims

1 are premised on a trademark infringement claim, relying on the same alleged course of
2 conduct: offering for sale and selling products with the infringing mark. A claim of
3 trademark infringement on a registered mark may be brought against any private person
4 who, without the consent of the holder of the registered trademark, uses

5 in commerce any reproduction, counterfeit, copy, or colorable imitation of
6 a registered mark in connection with the sale, offering for sale, distribution
7 or advertising of any goods or services on or in connection with which such
8 use is likely to cause confusion, or to cause mistake, or to deceive

9 15 U.S.C. § 1114(1)(a). “Neither actual confusion nor intent is necessary to a
10 finding of likelihood of confusion.” *Century 21 Real Estate Corp. v. Sandlin*, 846 F.2d
11 1175, 1178 (9th Cir. 1988).

12 Section 43 of the Lanham Act provides a cause of action for a plaintiff injured by
13 a common law trademark violation:

14 (a) Any person who shall affix, apply, or annex, or use-in connection with
15 any goods or services . . . any false description or representation, including
16 words or other symbols tending falsely to describe or represent the
17 same . . . shall be liable to a civil action by . . . any person who believes
18 that he is or is likely to be damaged by the use of any such false description
19 or representation.

20 15 U.S.C. § 1125(a). Infringement claims brought under 15 U.S.C. §§ 1114 and
21 1125 are subject to the same test; “[T]he critical determination is whether an alleged
22 trademark infringer’s use of a mark creates a likelihood that the consuming public will
23 be confused as to who makes what product.” *Jada Toys, Inc. v. Mattel, Inc.*, 518 F.3d
24 628, 632 (9th Cir. 2008) (internal quotations and citations omitted). In *AMF Inc. v.*
25 *Sleekcraft Boats*, the Ninth Circuit set forth eight factors a court should consider in
26 determining whether two marks are confusingly similar. 599 F.2d 341 (9th Cir. 1979),
27 *abrogated on other grounds by Mattel, Inc. v. Walking Mountain Prods.*, 353 F.3d 792
28 (9th Cir. 2003). The factors are: (1) the strength of the mark, (2) the proximity or
relatedness of the goods or services, (3) the similarity of the marks, (4) evidence of
actual confusion, (5) marketing channels used, (6) the type of goods or services and the

1 degree of care likely to be exercised by the purchasers, (7) defendant’s intent in
2 selecting the mark, and (8) likelihood of expansion of product lines. *Id.* at 348–49.

3 Here, Saredidine alleges that he has used the mark since 2013, and both he and
4 Defendants sell related products—liquids for electronic cigarettes, on the one hand, and
5 CBD and smoking-related products on the other. (Compl. ¶¶ 10, 25–27.) Furthermore,
6 Saredidine alleges that Defendants’ PHARMS Marks are “nearly identical” to the ’681
7 Mark. (See Compl. ¶¶ 21, 26.) Saredidine also alleges that Defendants’ use “has
8 already resulted in instances of actual confusion.” (Compl. ¶¶ 21, 26.) Thus,
9 Saredidine’s allegations demonstrate that he can establish his mark is strong, similar to
10 the infringing mark, used in connection with the same category goods as Defendants’
11 products and confused with Defendants’ mark. Although, Saredidine fails to provide
12 allegations as to all the *Sleekcraft* factors, his allegations taken as true demonstrate that
13 “use of a mark creates a likelihood that the consuming public will be confused as to
14 who makes what product.” *Jada Toys, Inc.*, 518 F.3d at 632. Thus, the facts as alleged
15 are sufficient to establish a prima facie case for trademark infringement and false
16 designation of origin.

17 Finally, the Lanham Act also empowers courts to “determine the right to
18 registration” and “order the cancellation of registrations . . . with respect to any party to
19 the action.” 15 U.S.C. § 1119. Priority of use along with likelihood of confusion is one
20 ground for invalidation. *Sengoku Works Ltd. v. RMC Int’l, Ltd.*, 96 F.3d 1217, 1219–
21 20 (9th Cir. 1996). If a party can show that it “used the mark in commerce first, then
22 the registration may be invalidated.” *Id.* at 1220. Here, Saredidine alleges that he used
23 the “AREA 51” mark in 2013, five years before Defendants used the mark. (Compl.
24 ¶¶ 10, 12.) As Saredidine alleges a priority of use and likelihood of confusion, as
25 discussed above, he adequately alleges a valid cancellation claim.

26 In sum, Saredidine has sufficiently alleged trademark infringement and
27 cancellation claims on which he may recover. The second and third *Eitel* Factors weigh
28 in favor of default judgment.

1 4. *The Sum of Money at Stake*

2 The fourth *Eitel* Factor balances “the amount of money at stake in relation to the
3 seriousness of [the] [d]efendant’s conduct.” *PepsiCo*, 238 F. Supp. 2d at 1176; *Eitel*,
4 782 F.2d at 1471. The amount at stake must be proportionate to the harm alleged.
5 *Landstar*, 725 F. Supp. 2d at 921. “Default judgment is disfavored where the sum of
6 money at stake is too large or unreasonable in light of the defendant’s actions.” *Truong*
7 *Giang Corp. v. Twinstar Tea Corp.*, No. C 06-03594 JSW, 2007 WL 1545173, at *12
8 (N.D. Cal. May 29, 2007). When a defendant is found liable for trademark infringement
9 “the plaintiff shall be entitled . . . to recover (1) defendant’s profits, (2) any damages
10 sustained by the plaintiff, and (3) the costs of the action.” 15 U.S.C. § 1117(a).
11 Depending on the circumstances, the Court may award in damages any amount greater
12 than but no more than three times the actual damages incurred. *Id.* Alternatively, the
13 Court may “in its discretion enter judgment for [an adequate] sum as the court shall find
14 to be just.” *Id.*

15 In his Complaint, Sarieddine seeks damages and Defendants’ profits but fails to
16 request any specific amount. (Compl. at 10.) In his Motion, Sarieddine seeks \$25,000
17 in statutory damages and \$4735 in attorneys’ fees and costs. (Mot. 4.) But Sarieddine
18 fails to allege his actual damages in his Complaint, Motion, or any supplementary
19 declaration. Based on the proffered allegations, the Court cannot determine that the
20 amount at stake is proportionate to the harm alleged. Thus, this factor does not weigh
21 in favor of granting default judgment.

22 5. *Possibility of Dispute*

23 The fifth *Eitel* Factor considers the possibility of dispute regarding material facts.
24 *PepsiCo*, 238 F. Supp. 2d at 1177. Here, Defendants have attempted to oppose, albeit
25 belatedly, Sarieddine’s Motion and raise several factual disputes in its response to the
26 Motion. (See Opp’n.) For example, Defendants assert that their trademark is in a
27 distinct good category from that of Sarieddine and they lacked knowledge of
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1 Sarieddine's trademark. (Opp'n 2–3.) Thus, this factor weighs against default
2 judgment.

3 *6. Possibility of Excusable Neglect*

4 The sixth *Eitel* Factor considers whether Defendants' default is the result of
5 excusable neglect. *Eitel*, 782 F.2d at 1470. Defendants assert that they were "led to
6 believe that the action would be dropped" and Sarieddine filed the suit due to
7 Defendants financial vulnerability and inability to defend. (Opp'n 1–2.) Thus, the
8 Court finds that the default is due to excusable neglect. Thus, this factor weighs against
9 default judgment.

10 *7. Policy Favoring Decision on the Merits*

11 Finally, "default judgments are ordinarily disfavored. Cases should be decided
12 on their merits whenever reasonably possible." *Eitel*, 782 F.2d at 1472. As Defendants
13 have appeared and seem interested in prosecuting this case on the merits, this factor
14 weighs against default judgment.

15 In sum, the *Eitel* Factors weigh against default judgment. Therefore, the Court
16 **DENIES** Sarieddine's request for entry of default judgment.

17 **C. Setting Aside Default**

18 Rule 55(c) gives a district court the discretion to set aside entry of default upon a
19 showing of good cause. Fed. R. Civ. P. 55(c). "The court can set aside entries of default
20 sua sponte." *New Milani Grp., Inc. v. Aslani*, No. 17-cv-02791 SJO (PJWx), 2017 WL
21 8220225, at *1 (C.D. Cal. June 9, 2017) (citations omitted). In assessing whether good
22 cause exists to set aside default, district courts look at three factors: (1) whether the
23 plaintiff will be prejudiced; (2) whether culpable conduct of the defendant led to the
24 default; and (3) whether the defendant has a meritorious defense. *See Brandt v. Am.*
25 *Bankers Ins. Co. of Fla.*, 653 F.3d 1108, 1111 (9th Cir. 2011) (citations omitted).
26 Addressing each factor in turn, the Court finds good cause for setting aside default.

27 The first factor asks whether the plaintiff will be prejudiced by relieving the
28 defendant from default. *Id.* at 1111. "To be prejudicial, the setting aside of a judgment

1 must result in greater harm than simply delaying resolution of the case. Rather, the
2 standard is whether [plaintiff's] ability to pursue his claim will be hindered.” *TCI Grp.*
3 *Life Ins. Plan v. Knoebber*, 244 F.3d 691, 701 (9th Cir. 2001) (alteration in original),
4 *overruled on other grounds by Egelhoff v. Egelhovv ex rel. Breiner*, 532 U.S. 141
5 (2001). As previously discussed, apart from delayed resolution of the case, the Court
6 sees no potential harm to Saredidine. “[M]erely being forced to litigate on the merits
7 cannot be considered prejudicial for purposes of lifting a default judgment.” *TCI Grp.*
8 *Life Ins. Plan*, 244 F.3d at 701. Therefore, the Court finds Saredidine will not be
9 prejudiced.

10 Next, the Court assesses whether Defendants’ culpable conduct led to the default.
11 *See id.* at 696. “[A] defendant’s conduct is culpable if he has received actual or
12 constructive notice of the filing of the action and *intentionally* failed to answer.” *Alan*
13 *Neuman Prods., Inc. v. Albright*, 862 F.2d 1388, 1392 (9th Cir. 1988) (emphasis added).
14 “[I]n this context the term ‘intentionally’ means that a movant cannot be treated as
15 culpable simply for having made a conscious choice not to answer; rather, to treat a
16 failure to answer as culpable, the movant must have acted with bad faith” *United*
17 *States v. Signed Pers. Check No. 730 of Yubran S. Mesle*, 615 F.3d 1085, 1092 (9th Cir.
18 2010) (citation omitted). Here, Defendants assert that they have engaged in several
19 discussions with Saredidine regarding this matter and were led to believe that this action
20 would be dropped. Defendants have not intentionally failed to answer. Therefore,
21 Defendants conduct is not culpable.

22 Finally, the Court evaluates whether Defendants have a meritorious defense. *See*
23 *TCI Grp. Life Ins. Plan*, 244 F.3d at 699. The standard required to satisfy this factor is
24 to “allege sufficient facts that, if true, would constitute a defense.” *Signed Pers. Check*
25 *No. 730 of Yubran S. Mesle*, 615 F.3d at 1094. “[D]efendant[s] need not show that
26 [they] will prevail, only that there is a bona fide chance that such a result will occur if
27 the factual allegations are true.” *New Milani Grp., Inc.*, 2017 WL 8220225, at *2
28 (citation omitted). Here, Defendants dispute certain facts Saredidine proffers to prove

1 trademark infringement claims. (*See* Opp’n.) For example, Defendants assert that their
2 trademark is in a distinct good category from that of Saredidine and they lacked
3 knowledge of Saredidine’s trademark. (Opp’n 2–3.) Thus, Defendants have adequately
4 demonstrated that that there is a bona fide chance that they may prevail.

5 After considering the three factors, the Court finds good cause to **SET ASIDE**
6 **DEFAULT** as to all Defendants.

7 **CONCLUSION**

8 For the reasons discussed above, the Court **DENIES** Saredidine’s Motion and
9 **SETS ASIDE DEFAULT** as to all Defendants. The Court informs Defendants that
10 although Mr. Sanchez may appear pro se, Pharms **MUST** be represented by an attorney.
11 Failure to retain counsel may result in entry of default for Pharms. The Court grants
12 Defendants 40 days to file an answer.

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14 **IT IS SO ORDERED.**

15
16 August 6, 2020

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19 **OTIS D. WRIGHT, II**
20 **UNITED STATES DISTRICT JUDGE**