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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SONY BMG MUSIC ENTERTAINMENT,)	1:08-cv-0590-LJO-SMS
a Delaware general)	
partnership, et al.,)	ORDER VACATING HEARING ON
)	PLAINTIFF'S MOTION FOR DEFAULT
Plaintiffs,)	JUDGMENT (DOC. 17)
v.)	
)	ORDER DIRECTING FURTHER BRIEFING
CODY HEINSOHN, aka HEINSOHN)	BY PLAINTIFFS IN THE EVENT OF
CODY,)	PLAINTIFF'S REILING THE MOTION
)	
Defendant.)	
)	
)	

Plaintiffs are proceeding with a civil action in this Court. The matter has been referred to the Magistrate Judge pursuant to 28 U.S.C. § 636(b) and Local Rules 72-302(c)(19) and 72-303.

Plaintiffs' motion for a default judgment against Defendant Cody Heinsohn, filed on October 14, 2008, was set to be heard on January 16, 2009. The Court has reviewed the moving papers.

Fed. R. Civ. P. 5(d) requires that any paper after the complaint that is required to be served must be filed, together with a certificate of service, within a reasonable time after service. Local Rule 5-135(c) expressly requires that except for ex parte matters, a paper document shall not be submitted for filing unless it is accompanied by a proof of service. Further, it expressly requires that proof of service shall be under

1 penalty of perjury.

2 Here, the proofs of service submitted by Plaintiff with
3 respect to the motion for default judgment and attachments, and
4 the order granting Plaintiffs' ex parte application to continue
5 the hearing on the motion for default judgment, do not contain
6 declarations under penalty of perjury. See, 28 U.S.C. § 1746.
7 Accordingly, legally sufficient proof of service of the pertinent
8 moving papers and legally sufficient notice of the hearing are
9 lacking.

10 Therefore, the hearing on the motion for default judgment IS
11 VACATED without prejudice to Plaintiffs' renoticing and refileing
12 the motion with legally sufficient proofs of service.

13 Further, the Court notes that there are additional defective
14 proofs of service of other documents that appear to be pertinent
15 to the question of adequate notice to Defendant of various
16 matters, including but not limited to the declaration of Zavala
17 in support of request to enter default (Doc. 14-2) and the
18 certificate of service of the clerk's entry of default (Doc. 16).
19 Should Plaintiffs refile their motion for default judgment
20 without correcting these additional defects, Plaintiffs ARE
21 DIRECTED to provide legal authority and complete analysis
22 concerning the legal sufficiency of notice to Defendant in
23 connection with any of the matters to which the defective proofs
24 of service relate. Failure to do so will result in the matter
25 being dropped from the calendar.

26 IT IS SO ORDERED.

27 **Dated: January 14, 2009**

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE

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