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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

HERMAN PEARL COMPANY, et al.,

Plaintiff,

No. CIV S-11-0711 JAM CKD

vs.

GLOBAL FREIGHT SERVICES, LLC, et al.,

Defendants.

ORDER

_____ /


Defendant and cross claimant D & P Enterprises, Inc. filed motions for default judgment. In the cross complaint, plaintiff alleges claims for fraud, conversion and indemnity arising out of the sale to cross claimant by cross defendants of allegedly stolen merchandise. The motions for default judgment are defective in that they were not properly noticed for hearing, are not accompanied by a memorandum of points and authorities in support of the motion, and the affidavit relied on by cross claimant does not establish that cross claimant is entitled to the relief requested. See, e.g., Atchison, T. & S. F. Ry. v. Lan Franco, 267 Cal. App. 2d 881 (1968) (right to non-contractual implied indemnity rests upon equitable considerations). Here, no judgment has been taken against cross claimant and the affidavit of Amy Johnson (dkt. no. 22-5) is insufficient to support entry of default judgment against cross defendants.

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Accordingly, IT IS HEREBY ORDERED that cross claimant's motions for default judgment (dkt. no. 28, 30, 32) are denied without prejudice.

Dated: November 7, 2011



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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hermanpearl.def