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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOE HAND PROMOTIONS, INC.,

Plaintiff,

v.

WILLIE HENRY WILLIAMS, et al.,

Defendants.

No. 2:14-cv-2663-JAM-AC

FINDINGS & RECOMMENDATIONS

On April 22, 2015, the court held a hearing on defendant Willie Henry Williams' motion to set aside the court's entry of default. Diane Devin appeared for plaintiff Joe Hand Promotions, Inc. and Nilesh Choudhary appeared for defendant Williams.¹ On review of the motions, the documents filed in support and opposition, hearing the arguments of counsel, and good cause appearing therefor, THE COURT FINDS AS FOLLOWS:

PROCEDURAL HISTORY

On November 14, 2014, plaintiff filed its complaint against defendants for violation of 47 U.S.C. § 605, 553; California Business and Professions Code §§ 17200, et seq.; and conversion.

¹ Nilesh Choudhary filed a proposed substitute of attorney signed by both him and defendant Williams on April 21, 2015. ECF No. 11. As the undersigned stated at the April 22, 2015, hearing, all proposed orders must be emailed to the undersigned as a Word document. Local Rule 137(b). Although Mr. Choudhary neglected to do this, the undersigned agreed to sign the chambers' courtesy copy instead. ECF No. 15. In the future, the court expects counsel to abide by the Local Rules when filing motions and proposed orders.

1 ECF No. 1. Plaintiff alleges that it was the exclusive commercial domestic distributor of Ultimate
2 Fighting Championship 167: Georges St-Pierre v. Johny Hendricks (hereinafter “the Program”)
3 and that on November 15, 2013, defendant Williams supervised it being illegally shown at The
4 Liaisons Lounge and Restaurant. Id. at 3–4.

5 On January 24, 2015, plaintiff submitted proofs of service for both defendants. ECF Nos.
6 4 & 5. According to plaintiff, it served defendants by substituted service on January 13, 2015,
7 when it left copies of the summons and complaint with defendant Williams’ son, Willie Henry
8 Williams Jr., at 2667 Alta Arden Expressway, Sacramento, California 95825. Id. Plaintiff states
9 that it made at least three attempts to personally serve defendants and mailed copies to the
10 foregoing address on January 14, 2015. Id. On March 3, 2015, plaintiff requested that the clerk
11 of the court enter orders of default for both defendants. ECF No. 6. On March 4, 2015, the clerk
12 of the court entered default orders for both defendants. ECF No. 7. On March 25, 2015,
13 defendant Williams filed a motion to set aside the entry of default. ECF No. 8. The motion was
14 amended on March 27, 2015. ECF No. 9. On April 8, 2015, plaintiff filed an opposition. ECF
15 No. 10.

16 On April 21, 2015, defendant Williams filed a proposed substitute of attorney. ECF No.
17 11. Also on April 21, 2015, defendant Williams filed a declaration stating that although he does
18 have a son his name is Curvin Demone Williams, not Willie Henry Williams Jr. as plaintiff
19 contends, and that the son does not live in California. ECF No. 13.

20 LEGAL STANDARDS

21 The Federal Rules provide that a “court may set aside an entry of default for good cause.”
22 Fed. R. Civ. Pro. 55(c). To determine “good cause”, a court must “consider[] three factors: (1)
23 whether [the party seeking to set aside the default] engaged in culpable conduct that led to the
24 default; (2) whether [it] had a meritorious defense; or (3) whether reopening the default judgment
25 would prejudice” the other party. Franchise Holding II, LLC. v. Huntington Restaurants Grp.,
26 Inc., 375 F.3d 922, 925–26 (9th Cir. 2004). This standard, which is the same as the one used to
27 determine whether a default judgment should be set aside under Rule 60(b), is disjunctive, such
28 that a finding that any one of these factors is true is sufficient reason for the district court to refuse

1 response, plaintiff’s opposition lays out exactly how defendant Williams was properly served.
2 ECF No. 10 at 5–6. The fact that defendant Williams was properly served, however, does not
3 establish he intentionally failed to answer plaintiff’s complaint. Plaintiff also argues that
4 defendant Williams’ lack of legal sophistication and age cannot excuse his failure to timely
5 respond to plaintiff’s complaint. Id. at 7. Even if that were true, the fact that defendant Williams
6 didn’t receive actual notice of his involvement in this matter until mid-March is enough to
7 establish he did not engage in culpable conduct.

8 When it comes to the second “meritorious defense” factor, “all that is necessary . . . is to
9 allege sufficient facts that, if true, would constitute a defense: ‘the question whether the factual
10 allegation [i]s true’ is not to be determined by the court when it decides the motion to set aside the
11 default.” Signed Pers. Check No. 730 of Yubran S. Mesle, 615 F.3d at 1094 (citation omitted).
12 Defendant Williams states that he did not show the Program at The Liaisons Lounge and
13 Restaurant. ECF No. 8 at 4–5. Defendant Williams also argues that plaintiff has no basis for
14 naming him in this lawsuit because he has no active role in managing defendant International
15 Wealth Enterprises, Inc. (“Wealth Enterprises”). Id. Defendant Williams’ assertion that the
16 Program was never shown at The Liaisons Lounge and Restaurant would constitute a complete
17 defense to plaintiff’s claims, if true. Plaintiff concedes as much in his opposition. ECF No. 10 at
18 9.

19 Finally, the “prejudice” factor requires plaintiff to suffer from some prejudice beyond
20 minimal delay. Bateman v. U.S. Postal Serv., 231 F.3d 1220, 1225 (9th Cir. 2000). Plaintiff
21 contends that it would be prejudiced by the granting of defendant Williams’ motion because
22 defendant Williams claims not to be involved in the operation of defendant Wealth Enterprises.
23 ECF No. 10 at 8–9. According to plaintiff, defendant Williams’ lack of involvement in defendant
24 Wealth Enterprises will create substantial problems with the discovery of information relevant to
25 the operation of the business. Id. at 9. Plaintiff does not explain why this amounts to prejudice
26 that would result from the granting of defendant Williams’ motion. Any potential issues
27 regarding discovery can be resolved at the appropriate time, after defendant Williams’ motion has
28 been granted. Accordingly, the court finds that plaintiff would not be prejudiced by the granting

1 of defendant Williams' motion.

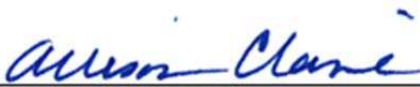
2 Plaintiff also points out that defendant Williams' motion does not apply to the default
3 order issued for defendant Wealth Enterprises because corporations cannot be represented by
4 individuals who are not licensed to practice the law. Defendant Williams did not purport to bring
5 this motion move on behalf of defendant Wealth Enterprises. Defendant Williams' motion refers
6 primarily to himself in the singular and contains little to no mention of defendant Wealth
7 Enterprises. ECF No. 8. In addition, Mr. Choudhary does not represent defendant Wealth
8 Enterprises. As Mr. Choudhary stated at the court's April 22, 2015, hearing, he represents
9 defendant Williams exclusively. Defendant Wealth Enterprises has yet to appear in this matter
10 and accordingly, the court's order of default as to it remains in effect.

11 CONCLUSION

12 In accordance with the foregoing, THE COURT HEREBY RECOMMENDS that
13 defendant Williams' amended motion to set aside the court's order of default, ECF No. 9, be
14 GRANTED and his original motion to set aside the court's order of default, ECF No. 8, be
15 DENIED as moot.

16 These findings and recommendations are submitted to the United States District Judge
17 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
18 after being served with these findings and recommendations, any party may file written
19 objections with the court. The document should be captioned "Objections to Magistrate Judge's
20 Findings and Recommendations." Any response to the objections shall be filed and served within
21 fourteen days after service of the objections. Failure to file objections within the specified time
22 may waive the right to appeal the District Court's order. *Martinez v. Ylst*, 951 F.2d 1153 (9th
23 Cir. 1991).

24 DATED: April 23, 2015

25 
26 ALLISON CLAIRE
27 UNITED STATES MAGISTRATE JUDGE
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