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

GENERAL ELECTRIC CAPITAL CORPORATION,

No. 2:16-CV-0029-KJM-CMK

Plaintiff,

FINDINGS AND RECOMMENDATIONS

vs.

RHINO BUSINESS SYSTEMS, INC.,

Defendant.

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Invoking the court’s diversity jurisdiction, plaintiff brings this civil action for breach of contract. Defendant was properly served (see Doc.6) but failed to respond to the complaint. Defendant’s default was entered on March 30, 2016 (see Doc. 16). On May 11, 2016, the District Judge issued an order granting plaintiff’s unopposed motion for a pre-judgment writ of attachment (see Doc. 22). Pending before the court is plaintiff’s unopposed motion (Doc. 29) for default judgment in the amount of \$404,164.18, plus attorney’s fees and costs pursuant to the contract.

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1 **I. PLAINTIFF’S ALLEGATIONS**

2 This action proceeds on the original complaint (Doc. 1), filed on January 1, 2016.

3 Plaintiff alleges the following facts (see Doc. 1, ¶¶ 9-25):

- 4 1. Defendant is an office equipment broker/dealer and leases, sells, and
- 5 services office equipment and products.
- 6 2. On October 20, 2011, plaintiff and defendant entered into a
- 7 “Strategic Alliance Agreement” (see Doc. 1, Ex. A).
- 8 3. Plaintiff agreed to provide financing for customers that intended to
- 9 purchase or lease office equipment (“Transactions”).
- 10 4. Defendant entered into various Transactions financed by plaintiff
- 11 (collectively, the “Indemnified Accounts”; see Doc. 1, Ex. B).
- 12 5. Defendant breached the contract with respect to the Indemnified Accounts
- 13 by: (a) upgrading and refinancing, through a source other than plaintiff, the
- 14 Transactions without plaintiff’s knowledge or consent; and (b) failing to
- 15 comply with the “Buyout to Keep” and similar provisions as to each of the
- 16 Transactions.
- 17 6. Defendant also breached the contract by: (a) advising the customers
- 18 associated with the Indemnified Accounts that defendant would fulfill the
- 19 customers’ obligations to plaintiff; and/or (b) advising the customers that
- 20 their obligations to plaintiff were forgiven.
- 21 7. Plaintiff sent defendant two Notices of Demand, the first on July 15, 2015,
- 22 in the amount of \$113,751.37 (see Doc. 1, Ex. C), and the second on
- 23 October 6, 2015, in the amount of \$363,775.86 (see Doc. 1, Ex. D).
- 24 8. Defendant has not satisfied either demand.

19 Plaintiff claims damages for breach of contract, interference with contract, and conversion.<sup>1</sup>

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26 <sup>1</sup> In the complaint, plaintiff also seeks injunctive relief, but does not seek such relief in the current motion for default judgment.

1 **II. STANDARD FOR DEFAULT JUDGMENT**

2 Whether to grant or deny default judgment is within the discretion of the court.  
3 See Aldabe v. Aldabe, 616 F.2d 1089, 1092 (9th Cir. 1980). In exercising this discretion, the  
4 court considers the following factors: (1) the possibility of prejudice to the plaintiff if relief is  
5 denied; (2) the substantive merits of plaintiff's claims; (3) the sufficiency of the claims raised in  
6 the complaint; (4) the sum of money at stake; (5) the possibility of a dispute concerning material  
7 facts; (6) whether the default was due to excusable neglect; and (7) the strong policy favoring  
8 decisions on the merits when reasonably possible. See Eitel v. McCool, 782 F.2d 1470, 1471-72  
9 (9th Cir 1986). Regarding the last factor, a decisions on the merits is impractical, if not  
10 impossible, where defendants refuse to defend. See Pepsico, Inc. v. Cal. Sec. Cans, 238 F. Supp.  
11 2d 1172, 1177 (C.D. Cal. 2002).

12 Where a defendant has failed to respond to the complaint, the court presumes that  
13 all well-pleaded factual allegations relating to liability are true. See Geddes v. United Financial  
14 Group, 559 F.2d 557, 560 (9th Cir. 1977) (per curiam); Danning v. Lavine, 572 F.2d 1386 (9th  
15 Cir. 1978); Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917-18 (9th Cir. 1987) (per  
16 curiam); see also Discovery Communications, Inc. v. Animal Planet, Inc., 172 F. Supp. 2d 1282,  
17 1288 (C.D. Cal. 2001). Therefore, when determining liability, a defendant's default functions as  
18 an admission of the plaintiff's well-pleaded allegations of fact. See Panning v. Lavine, 572 F.2d  
19 1386 (9th Cir. 1978). However, the court has the responsibility of determining whether the facts  
20 alleged in the complaint state a claim which can support the judgment. See Danning v. Lavine,  
21 572 F.2d 1386, 1388 (9th Cir. 1978). For this reason, the district court does not abuse its  
22 discretion in denying default judgment where the factual allegations as to liability lack merit.  
23 See Aldabe, 616 F.2d at 1092-93.

24 While factual allegations concerning liability are deemed admitted upon a  
25 defendant's default, the court does not presume that any factual allegations relating to the amount  
26 of damages suffered are true. See Geddes, 559 F.2d at 560. The court must ensure that the



1 excusable neglect. Plaintiff is entitled to a default judgment in the amount of \$404,164.18.<sup>2</sup>

2 Plaintiff is also entitled to attorney's fees and costs. Under Paragraph 6 of the  
3 contract, plaintiff is entitled to "reasonable attorney's fees and costs." Plaintiff's counsel has  
4 submitted declarations establishing reasonable attorney's fees and costs through August 31,  
5 2016, in the amount of \$25,684.84. Counsel has also submitted a declaration establishing  
6 reasonable additional attorney's fees through September 30, 2016, in the amount of \$1,825.20.  
7 Plaintiff is also entitled to recover these amounts.

#### 9 IV. CONCLUSION

10 Based on the foregoing, the undersigned recommends that:

- 11 1. Plaintiff's motion for default judgment (Doc. 29) be granted; and
- 12 2. Default judgment be entered in favor of plaintiff in the amount of  
13 \$431,674.22.

14 These findings and recommendations are submitted to the United States District  
15 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days  
16 after being served with these findings and recommendations, any party may file written  
17 objections with the court. Responses to objections shall be filed within 14 days after service of  
18 objections. Failure to file objections within the specified time may waive the right to appeal.

19 See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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21 DATED: February 17, 2017

  
22 **CRAIG M. KELLISON**  
23 UNITED STATES MAGISTRATE JUDGE

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25 <sup>2</sup> This amount reflects a reduction from the total amount sought in plaintiff's  
26 Notices of Demand by \$73,363.05 reflecting that the account with Big Valley Joint Unified  
School District is being paid and is current.

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