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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GS HOLISTIC, LLC,
Plaintiff,
v.
MAHER AHMED NAGI,
Defendant.

No. 2:23-cv-02497-CKD

ORDER DENYING PLAINTIFF'S MOTION
FOR DEFAULT JUDGMENT AND
DISMISSING THE COMPLAINT WITH
LEAVE TO AMEND

(ECF No. 16.)

Plaintiff, GS Holistic, LLC, moves the court for default judgment against defendant Maher Ahmed Nagi.¹ (ECF No. 16.) Specifically, plaintiff seeks a default judgment against defendant for statutory damages in the amount of \$150,000.00 on claims of trademark infringement and unfair competition under the Lanham Act, 15 U.S.C. 1051 et seq., costs of \$781.60, and injunctive relief.²

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¹ Plaintiff has brought suit against “defendants” Maher Ahmed Nagi and Maher Ahmed Nagi, doing business as A&S Smoke Shop & Vape. (See ECF No. 1.) However, as discussed below, plaintiff alleges A&S Smoke Shop & Vape is a sole proprietorship, therefore it is duplicative to sue both. See *infra* Part III.A. Accordingly, the court will analyze this motion relating to defendant Maher Ahmed Nagi only.

² This motion is referred to the undersigned pursuant to Local Rule 302(c)(19) and 28 U.S.C. § 636(b)(1)(A).

1 Defendant has neither appeared nor opposed the motion. The court previously ordered this
2 motion submitted without appearance and argument pursuant to Local Rule 230(g). (ECF No.
3 17.) For the reasons set forth below, plaintiff’s motion for default judgment is DENIED without
4 prejudice, and the complaint is DISMISSED with LEAVE TO AMEND.

5 **I. BACKGROUND**

6 Since 2020, plaintiff has marketed and sold glass infusers and accessories using the well-
7 known trademark “Stündenglass.” (ECF No. 1 at ¶ 7.) Plaintiff is the owner of three federally
8 registered trademarks in association with these goods:

- 9 a. U.S. Trademark Registration Number 6,633,884 for the standard character mark
10 “Stündenglass” in association with goods further identified in international class 011;
11 b. U.S. Trademark Registration Number 6,174,292 for the design plus words mark “S”
12 and its logo in association with goods further identified in international class 034,
13 c. U.S. Trademark Registration Number 6,174,291 for the standard character mark
14 “Stündenglass” in association with goods further identified in international class 034.

15 (*Id.* ¶ 11.)

16 Plaintiff has used the Stündenglass trademarks in commerce continuously since 2020 in
17 connection with the manufacturing of glass infusers and accessories. (*Id.* ¶ 12.) Plaintiff has
18 expended substantial time, money, and other resources in developing, advertising, and promoting
19 its trademarks, resulting in wide public recognition of its products as being high-quality. (*Id.*
20 ¶¶ 12-21.) Plaintiff’s products have a higher sales value than other similar products, and
21 plaintiff’s products have been targeted by counterfeiters. (*Id.* ¶¶ 21-23.)

22 The complaint alleges plaintiff’s investigator purchased a Glass Infuser which had
23 packaging with the three Stündenglass Marks affixed to it for \$322.13 from A&S Smoke Shop &
24 Vape, and determined it was counterfeit. (*Id.* ¶ 29.) Plaintiffs never authorized defendant to sell
25 any merchandise bearing any of the Stündenglass Marks. (*Id.* ¶ 32.) Plaintiff claims defendant
26 Nagi “authorized, directed, and/or participated in A&S Smoke Shop’s offer for sale, in
27 commerce, of the Counterfeit Goods.” (*Id.* ¶ 30.) Plaintiff alleges that the use of the counterfeit
28 marks began after registration of the trademarks. (*Id.* ¶ 31.)

1 Plaintiff initiated this action on October 27, 2023, asserting claims for Federal Trademark
2 Counterfeiting and Infringement, 15 U.S.C. § 1114, and Federal False Designation of Origin and
3 Unfair Competition, 15 U.S.C. § 1125(a). (*See* ECF No. 1.) Plaintiff filed an extension of time to
4 perfect service on defendant (ECF No. 5), which the court granted (ECF No. 6). Returns of
5 service filed in February 2024 indicated Maher Ahmed Nagi, doing business as A&S Smoke
6 Shop & Vape, was served by personal service, and Maher Ahmed Nagi was served by substituted
7 service at the place of business. (ECF No. 7.) On April 3, 2024, plaintiff filed a second motion for
8 an extension of time to serve defendant because they stated that Nagi and A&S Smoke Shop &
9 Vape were served via substitute service at the place of business, but that some courts in the
10 Eastern District of California have found substituted service improper in other cases involving
11 this plaintiff. (ECF No. 11.) Plaintiff stated they attempted to serve defendant at a different
12 address in Ripon, California, on five occasions, and were unsuccessful. (*Id.*) The court granted
13 this motion. (ECF No. 12.) On July 9, 2024, plaintiff filed returns of service for Nagi and A&S
14 Smoke Shop & Vape. (ECF No. 13.)

15 A & S Smoke Shop & Vape is alleged to be a sole proprietorship business formed in
16 California with its principal place of business at 1725 Prescott Road in Modesto, California. (ECF
17 No. 1 ¶ 5.) Defendant Maher Ahmed Nagi is allegedly domiciled in and a resident of Modesto,
18 California, and is a citizen of California and conducts and solicits business in California. (*Id.* ¶ 6.)

19 Plaintiff filed a request for Clerk's Entry of Default as to Nagi and A&S Smoke Shop &
20 Vape (ECF No. 14), however, the Clerk entered default as to defendant Nagi only on July 17,
21 2024. (ECF No. 15.) Plaintiff's motion for default judgment filed on August 6, 2024 (ECF No.
22 16) is now before the court.

23 II. LEGAL STANDARDS

24 Pursuant to Federal Rule of Civil Procedure 55, default may be entered against a party
25 against whom a judgment for affirmative relief is sought if that party fails to plead or otherwise
26 defend against the action. *See* Fed. R. Civ. P. 55(a). The decision to grant or deny an application
27 for default judgment lies within the sound discretion of the district court. *Aldabe v. Aldabe*, 616
28 F.2d 1089, 1092 (9th Cir. 1980).

1 As a general rule, once default is entered, well-pleaded factual allegations in the operative
2 complaint are taken as true except for the allegations relating to damages. *TeleVideo Sys., Inc. v.*
3 *Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987) (per curiam) (citing *Geddes v. United Fin. Grp.*,
4 559 F.2d 557, 560 (9th Cir. 1977) (per curiam)); accord *Fair Housing of Marin v. Combs*, 285
5 F.3d 899, 906 (9th Cir. 2002). “[N]ecessary facts not contained in the pleadings, and claims
6 which are legally insufficient, are not established by default.” *Cripps v. Life Ins. Co. of N. Am.*,
7 980 F.2d 1261, 1267 (9th Cir. 1992). Where the pleadings are insufficient, the court may require
8 the moving party to produce evidence in support of the motion for default judgment. See
9 *TeleVideo Sys.*, 826 F.2d at 917-18.

10 Default judgments are ordinarily disfavored. *Eitel v. McCool*, 782 F.2d 1470, 1472 (9th
11 Cir. 1986). In making the determination whether to grant a motion for default judgment, the court
12 considers the following factors:

13 (1) the possibility of prejudice to the plaintiff, (2) the merits of
14 plaintiff’s substantive claim, (3) the sufficiency of the complaint, (4)
15 the sum of money at stake in the action; (5) the possibility of a dispute
16 concerning material facts; (6) whether the default was due to
excusable neglect, and (7) the strong policy underlying the Federal
Rules of Civil Procedure favoring decisions on the merits.

17 *Id.* at 1471-72.

18 **III. DISCUSSION**

19 **A. Duplicative Defendants**

20 Plaintiff asserts the same claims against both Nagi and Nagi doing business as A&S
21 Smoke Shop & Vape. However, plaintiff alleges that A&S Smoke Shop & Vape is a sole
22 proprietorship. (ECF No. 1 at 2.) Unlike other business entities, a sole proprietorship has no legal
23 existence separate from its owner. *Providence Wash. Ins. v. Valley Forge Ins.*, 42 Cal.App.4th
24 1194, 1199 (1996) (“A sole proprietorship is not a legal entity itself. Rather, the term refers to a
25 natural person who directly owns the business”) (citation omitted) (emphasis omitted). A
26 sole proprietorship may operate under a fictitious business name, see Cal. Bus. & Prof. Code
27 § 17900 *et seq.*, however, “[t]he business name is a fiction, and so too is any implication that the
28 business is a legal entity separate from its owner.” *Providence Wash. Ins.*, 42 Cal.App.4th at

1 1200. Since A&S Smoke Shop & Vape is allegedly a sole proprietorship operated by Nagi, it is
2 legally indistinguishable from him. See *Harrison v. Portfolio Grp. Management, Inc.*, 2021 WL
3 2550991, at *4 (E.D. Cal. June 22, 2021); *GS Holistic, LLC v. Nasher*, 2024 WL 1092915, at *2
4 (E.D. Cal. Mar. 13, 2024); see also *Sharemaster v. U.S. Sec. & Exchange Comm’n*, 847 F.3d
5 1059, 1066 n.4 (9th Cir. 2017). Therefore, plaintiff’s claims against Nagi doing business as A&S
6 Smoke Shop & Vape are duplicative of his claims against Nagi as an individual. Accordingly,
7 plaintiff’s motion for default judgment against defendant Nagi doing business as A&S Smoke
8 Shop & Vape should be denied. See *GS Holistic, LLC v. Nasher*, 2024 WL 1092915, at *2 (E.D.
9 Cal. Mar. 13, 2024).

10 Further, the court notes that Clerk’s Entry of Default was only entered against defendant
11 Nagi individually, and not A&S Smoke Shop & Vape. (ECF No. 15.) Because suing both the sole
12 proprietorship and the individual is duplicative, the fact that default was not entered against both
13 is not an issue here.

14 **B. Jurisdiction**

15 When default judgment is sought, the “district court has an affirmative duty to look into
16 its jurisdiction over both the subject matter and the parties.” *In re Tuli*, 172 F.3d 707, 712 (9th
17 Cir. 1999) (citations omitted). The court has subject matter jurisdiction over this action pursuant
18 to 28 U.S.C. § 1331 because it arises under federal trademark law, 15 U.S.C. § 1051, et seq. In
19 addition, the court has personal jurisdiction over defendant Nagi, who is alleged to be a California
20 resident. (ECF No. 1, ¶¶ 5-6.) A&S Smoke Shop & Vape allegedly has its principal place of
21 business in California. (*Id.*)

22 **C. Service of Complaint**

23 In reviewing a motion for default judgment, the court must determine whether defendant
24 was properly served with the summons and complaint. Fed. R. Civ. P. 4(c).

25 A return of service filed on July 9, 2024, indicates defendant Nagi³ was served by
26 substituted service with delivery to Abdul Nagi, listed as Father/Occupant at Nagi’s “home” at
27

28 ³ A&S Smoke Shop & Vape was served at the same time as defendant Nagi. (ECF No. 13 at 5-8.)

1 3636 Historic Court in Modesto, California. (ECF No. 13 at 1.) The registered process server
2 provided a declaration setting forth three prior attempts at personal service. (*Id.* at 3.) The process
3 server also indicated the service documents were subsequently mailed to defendant Nagi. (*Id.* at
4 4.) Plaintiff previously filed a return of service on February 29, 2024, indicating that defendant
5 Nagi was served via substituted service at Nagi’s business located at 1725 Prescott Road in
6 Modesto, California. (ECF No. 7-1 at 1.) Delivery was made to Aemen Alsaïdi, who is listed as
7 “Administrator/Accepting service.” (*Id.*) The registered process server provided a declaration
8 setting forth two prior attempts at service made at this location and indicated that the service
9 documents were mailed to defendant Nagi at this location. (*Id.* at 3-4.) Based on the information
10 in the returns of service, it appears defendant Nagi was properly served. *See* Fed. R. Civ. P.
11 4(e)(1) (an individual may be served by following state law in the state where the district court is
12 located); Cal. Civ. Proc. Code § 415.20(b) (providing for substituted service for an individual in
13 lieu of personal delivery when the summons and complaint cannot with reasonable diligence be
14 personally delivered to the person to be served, and which may be accomplished by leaving a
15 copy of the summons and complaint at the person’s dwelling house, usual place of abode, or
16 usual place of business and by thereafter mailing copies to the person to be served at the place
17 where the initial copies were left); *see also* Fed. R. Civ. P. 4(e)(2)(B) (an individual may be
18 served by leaving a copy of the summons and complaint at the individual’s dwelling or usual
19 place of abode with someone of suitable age and discretion who resides there); *G.S. Holistic, LLC*
20 *v. AA 110*, 2024 WL 2848455, at *2 (E.D. Cal. June 4, 2024) (finding substituted service on
21 individual appropriate).

22 **D. Application of *Eitel* Factors**

23 “The second and third *Eitel* factors both examine the merits and sufficiency of a plaintiff’s
24 complaint, and accordingly, are often analyzed together.” *Johnson v. Qolor LLC*, 2022 WL
25 3348589, at *1 (N.D. Cal. Aug. 12, 2022) (internal quotation marks and citations omitted). The
26 court considers whether the allegations in the complaint are sufficient to state a claim on which
27 plaintiff may recover. *See Danning v. Lavine*, 572 F.2d 1386, 1388 (9th Cir. 1978); *PepsiCo*, 238
28 F. Supp. 2d at 1175.

1 Plaintiff brings two claims: (1) trademark counterfeiting and infringement under the
2 Lanham Act, 15 U.S.C. § 1114 et seq., and (2) false designation of origin and unfair competition
3 under the Lanham Act, 15 U.S.C. § 1125 et seq. (ECF No. 1 at ¶¶ 52-68.) Courts have noted there
4 is “no material difference in the law governing relief” for these claims. *Menendez v. Saks & Co.*,
5 485 F.2d 1355, 1375 n.22 (2nd Cir. 1973), rev’d sub nom. on other grounds, *Alfred Dunhill of*
6 *London, Inc. v. Republic of Cuba*, 425 U.S. 682 (1976); *Walter v. Mattel, Inc.*, 210 F.3d 1108,
7 1111 (9th Cir. 2000) (“The test for false designation under the Lanham Act, as well as the . . .
8 statutory unfair competition claims, is whether there was a ‘likelihood of confusion.’”) (citation
9 omitted), *modified on other grounds by Surfivor Media, Inc. v. Survivor Prods.*, 406 F.3d 625
10 (9th Cir. 2005).

11 To state a claim for relief under either statute, a complaint must allege the plaintiff:
12 (1) “has a protectible ownership interest in the mark”; (2) that defendant used the mark; and
13 (3) “that the defendant’s use of the mark is likely to cause consumer confusion.” *Dep’t of Parks*
14 *& Rec. for State of Cal. v. Bazaar Del Mundo Inc.*, 448 F.3d 1118, 1124 (9th Cir. 2006). “The test
15 for likelihood of confusion is whether a ‘reasonably prudent consumer’ in the marketplace is
16 likely to be confused as to the origin of the good or service bearing one of the marks.”
17 *Dreamwerks Production Grp., Inc. v. SKG Studio*, 142 F.3d 1127, 1129 (9th Cir. 1998); *see also*
18 *AMF Inc. v. Sleekcraft Boats*, 599 F.2d 341, 348-49 (9th Cir. 1979) (setting forth eight factors of
19 consideration) *abrogated on other grounds by Mattel, Inc. v. Walking Mountain Prod.*, 353 F.3d
20 792, 810 n.19 (9th Cir. 2003). To make this determination, courts look to the eight *Sleekcraft*
21 factors: (1) strength of the mark; (2) proximity of the goods; (3) similarity of the marks; (4)
22 evidence of actual confusion; (5) marketing channels used; (6) type of goods and the degree of
23 care likely to be exercised by the purchaser; (7) defendant’s intent in selecting the mark; and (8)
24 likelihood of expansion of the product lines. *Punchbowl, Inc. v. AJ Press, LLC*, 90 F.4th 1022,
25 1027 (9th Cir. 2024). The test set forth in *Sleekcraft* is pliant: some factors are much more
26 important than others, and the relative importance of each is case-specific. *Brookfield Commc’ns,*
27 *Inc. v. W. Coast Ent. Corp.*, 174 F.3d 1036, 1054 (9th Cir. 1999)) (noting it is often possible to
28 determine whether there is likelihood of confusion after considering a subset of factors).

1 First, federal registration of a trademark or trademarks is prima facie evidence of
2 ownership of a valid trademark. 15 U.S.C. § 1057(b); *Brookfield Commc 'ns*, 174 F.3d at 1047.
3 The complaint's allegations adequately allege a protectible interest. However, even accepting all
4 well-pled factual allegations as true as required for default judgment motions, the complaint does
5 not allege sufficient facts to support plausible allegations that defendant used plaintiff's Marks in
6 an infringing or counterfeiting manner.

7 Second, the complaint lacks sufficient factual allegations to plausibly conclude defendant
8 used plaintiff's Marks. The complaint alleges that on October 20, 2022, plaintiff's investigator
9 "purchased a Glass Infuser that had packaging with the Stündenglass Marks affixed to it, from
10 A&S Smoke Shop, for a cost of \$322.13[.]" (ECF No. 1 at ¶ 29.) The investigator also observed
11 that A&S Smoke Shop & Vape had glass infusers which had packaging displaying the three
12 Marks. (*Id.*) While plaintiff alleges that all three Marks were included on the packaging, plaintiff
13 has not explained how one product can bear trademarks associated with two different
14 international classes of goods. *See* ECF No. 1 at ¶ 10(a) (Mark associated with international class
15 011); *id.* at ¶ 10(b)-(c) (Marks associated with international class 034); *see also GS Holistic, LLC*
16 *v. Mr Vape Smoke Shop*, 2024 WL 4545885, at *3 n.4 (E.D. Cal. Oct. 22, 2024); *G.S. Holistic,*
17 *LLC v. Shinwar*, 2024 WL 3890082, at *5 (E.D. Cal. Aug. 20, 2024). Plaintiff's motion for
18 default judgment appears to provide some clarity on this issue by stating that the glass infusers
19 can be used either for smoking purposes or infusing foods and drinks, however this does not
20 adequately explain why all three marks are on one packaging.

21 Also, plaintiff states in a conclusory manner that an investigator purchased a glass infuser
22 that had packaging with the Marks on it, "and it was a Counterfeit product in that its packaging
23 displayed the Infringing Marks." (ECF No. 1 at ¶ 29.) However, plaintiff does not explain how
24 the investigator determined the product was a counterfeit or the process the investigator used to
25 confirm the similarities of the trademarks. Other courts have noted that if defendant is reselling
26 plaintiff's products, this is not infringement. *See Shinwar*, 2024 WL 3890082, at *5; *GS Holistic,*
27 *LLC v. Ravens Smoke Shop, Inc.*, 2023 WL 5504964, at *5 (C.D. Cal. July 10, 2023) (citing *NEC*
28 *Electronics v. CAL Circuit Abco*, 810 F.2d 1506, 1509 (9th Cir. 1987) (noting that the sale of a

1 genuine trademarked product by an unauthorized seller is not a violation of the Lanham Act)).
2 Also, merely asserting that the infuser sold at A&S Smoke Shop & Vape is a “counterfeit
3 product” is a conclusory statement that is not taken as true. *See Paulsen v. CNF Inc.*, 559 F.3d
4 1061, 1071 (9th Cir. 2009) (the court is not required to accept as true legal conclusions in a
5 complaint “merely because they are cast in the form of factual allegations”); *see also GS Holistic,*
6 *LLC v. Cigarette Outlet Smoke Shop*, 2024 WL 519783, at *2 (E.D. Cal. Feb. 9, 2024) (denying
7 plaintiff’s motion for default judgment for, among other reasons, the complaint’s reliance on
8 conclusory statements that “the Glass Infuser [defendant] sold to Plaintiff’s investigator was a
9 Counterfeit Good with an Infringing Mark affixed to it”). Plaintiff’s complaint also states that
10 defendant’s use of the Marks “began after the registration of the Stündenglass Trademarks” (ECF
11 No. 1 ¶ 31), but plaintiff does not provide any details about when the use started.

12 Third, the complaint does not allege sufficient facts to support a plausible claim for
13 infringement regarding a consumer’s likelihood of confusion. The complaint does not contain any
14 photographs or product descriptions that demonstrate the similarities between the marks; no
15 allegations of actual confusion; no description of the marketing channels used; and no description
16 of the degree of care consumers will likely exercise in purchasing the goods. The complaint
17 makes only conclusory statements related to confusion, such as defendant uses “images and
18 names identical to or confusingly similar to the Stündenglass Marks, to confuse customers and aid
19 in the promotion and sale of” the allegedly counterfeit goods (ECF No. 1 at ¶ 35), and
20 defendant’s unauthorized use of counterfeit marks “on and in connection with Defendants’ offer
21 for sale in commerce is likely to cause confusion or mistake in the minds of the public” (*id.* ¶ 54).
22 The complaint also makes conclusory statements that A&S Smoke Shop & Vape has “distributed,
23 provided, marketed, advertised, promoted, offered for sale, and sold its water pipes in packaging
24 that bears the Infringing Marks through its retail convenience store.” (*Id.* ¶38.) However, these
25 conclusory statements lack factual support and are insufficient for the purposes of default
26 judgment. *See Paulsen*, 559 F.3d at 1071; *DIRECTV, Inc. v. Hoa Huynh*, 503 F.3d 847, 854 (9th
27 Cir. 2007); *see also GS Holistic, LLC v. Bubbles Smoke Shop*, 2023 WL 6787773, at *4 (denying
28 default judgment because the complaint failed to allege facts supporting a *Sleekcraft* analysis and

1 relied on conclusory statements about the likelihood of confusion). Plaintiff’s motion references
2 the *Sleekcraft* factors and provides photographs of the packaging of the allegedly counterfeit
3 product that has the Marks, but plaintiff does not apply the applicable legal standards. ECF No.
4 16 at 16; ECF No. 16-8; *see Shinwar*, 2024 WL 3890082, at *6.

5 The complaint also fails to adequately allege that defendant sold a counterfeit product
6 because the complaint does not describe the similarities of the marks. Instead, the complaint relies
7 on conclusory statements such as that “[t]he marks affixed to the Counterfeit Goods that the
8 Defendants have offered for sale are spurious marks which are identical with, or substantially
9 indistinguishable from, the Stündenglass Trademarks” and that “[t]he marks on the Counterfeit
10 Goods are in fact counterfeit marks as defined in 15 U.S.C. § 1116(d).” (ECF No. 1 at ¶ 27.)
11 Plaintiff’s allegation that an “investigator purchased a Glass Infuser that had packaging with the
12 Stündenglass Marks affixed to it . . . and it was a Counterfeit product in that its packaging
13 displayed the Infringing Marks” is also a conclusory statement, which is not taken as true. ECF
14 No. 1 at ¶ 29; *see Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (“Threadbare recitals of the
15 elements of a cause of action, supported by mere conclusory statements, do not suffice.”).
16 Plaintiff also does not explain the types of goods defendant sold in the past, other than the one
17 glass infuser sold to its investigator in October 2022. (ECF No. 1 at ¶ 29.) The complaint fails on
18 the counterfeit theory as well. *See Louis Vuitton Malletier, S.A. v. Akanoc Sols., Inc.*, 658 F.3d
19 936, 946 (9th Cir. 2011) (reminding that a counterfeit analysis requires analysis of whether the
20 defendant used a non-genuine mark identical to or substantially indistinguishable from the
21 plaintiff’s registered, genuine mark, and the genuine mark was registered for use on the same
22 goods to which the infringer applied the non-genuine mark); *see also GS Holistic, LLC v. J’s*
23 *Smoke Shop*, 2024 WL 1054899, at *3 (E.D. Cal. Mar. 11, 2024) (rejecting counterfeit theory on
24 default judgment motion because of the complaint’s failure to allege facts supporting the claim
25 and otherwise reliance on conclusory assertions that defendant’s goods were counterfeit).

26 Because the complaint fails to sufficiently plead facts supporting trademark infringement
27 and counterfeiting, or false designation of original claims, plaintiff has failed to satisfy the second
28 and third *Eitel* factors and the undersigned recommends denial of plaintiff’s motion for default

1 judgment.

2 **E. Stündenglass Marks Suits in Federal Courts**

3 The court notes that plaintiff has brought many similar claims about the Stündenglass
4 Marks against other defendants. *See Mr Vape Smoke Shop*, 2024 WL 4545885, at *3 (collecting
5 cases). Some judges have granted plaintiff's motions for default judgment. *See, e.g., GS Holistic,*
6 *LLC v. Cloud City Discount Cigarettes*, 2024 WL 3441441, at *5 (E.D. Cal. July 17, 2024)
7 (granting default judgment in part and limiting damages to \$5,000); *GS Holistic, LLC v. Nasher*,
8 2024 WL 1994707, at *1 (E.D. Cal. May 6, 2024) (same). But numerous other courts in the Ninth
9 Circuit have found vague and conclusory allegations made by plaintiff to be insufficient to grant
10 default judgment. *See, e.g., Shinwar*, 2024 WL 3890082, at *8 (denying motion for default
11 judgment without prejudice because plaintiffs allegations were vague and conclusory and did not
12 satisfy the second and third *Eitel* factors); *Mr Vape Smoke Shop*, 2024 WL 4545885, at *3
13 (same); *J's Smoke Shop*, 2024 WL 1054899, at *2-3 (same); *GS Holistic, LLC v. Kings*
14 *Smokeshop*, 2024 WL 150217, at *2-3 (E.D. Cal. Jan. 12, 2024) (same). For the reasons stated
15 above, the undersigned agrees with the cases finding plaintiff's allegations vague and conclusory
16 and that default judgment is not appropriate under the second and third *Eitel* factors.

17 **IV. CONCLUSION**

18 The court finds the second and third *Eitel* factors are not met, and denies plaintiff's
19 motion for default judgment. *See Akrura Pte. Ltd. v. Apero Tech. Grp.*, 2024 WL 2982971, at *1
20 (C.D. Cal. Apr. 16, 2024). The court therefore dismisses the complaint with leave to amend
21 because plaintiff may be able to cure its defects. Plaintiff is instructed to ensure that any amended
22 pleading cures defects identified in this order, if such defects can be cured, and to ensure that
23 plaintiff carries its burden on any subsequent motion for default judgment.

24 If plaintiff elects to file an amended complaint, it should be titled "First Amended
25 Complaint" with reference to the appropriate case number. An amended complaint must be
26 complete in itself without reference to any prior pleading. *See Loux v. Rhay*, 375 F.2d 55, 57 (9th
27 Cir. 1967); E.D. Cal. Local Rule 220. If plaintiff does not timely file an amended complaint, this
28 will result in a recommendation that this action be dismissed.

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ORDER

For the reasons set forth above, it is HEREBY ORDERED as follows:

1. Plaintiff’s motion for default judgment (ECF No. 16) is DENIED WITHOUT PREJUDICE;
2. The complaint (ECF No. 1) is DISMISSED; and
3. Plaintiff is GRANTED LEAVE to file an amended complaint within thirty (30) days of this Order.

Dated: March 6, 2025



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

5, gsho.2497.23