

United States District Court  
For the Northern District of California

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

MITSUI O.S.K. LINES, LTD.,	)	Case No. 10-cv-5586-SC
	)	
Plaintiff,	)	ORDER GRANTING APPLICATION
	)	<u>FOR DEFAULT JUDGMENT</u>
v.	)	
	)	
ALLIED TRANSPORT SYSTEM (USA),	)	
INC.; CENTURION LOGISTICS	)	
MANAGEMENT; CENTURION LOGISTICS	)	
SERVICES, LTD.; UNION LOGISTICS,	)	
INC.; and DOES 1 through 20,	)	
	)	
Defendants.	)	
	)	

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**I. INTRODUCTION**

Now before the court is Plaintiff Mitsui O.S.K. Lines, Ltd.'s ("Plaintiff") Application for Default Judgment against Defendant Centurion Logistics Services, Ltd. ("Defendant").<sup>1</sup> ECF No. 133 ("Appl."). In this Order, the Court reconsiders Plaintiff's Application after ordering it to prove service on Defendant. See Order Denying Appl. at 1-2. Defendant has neither appeared in this action nor opposed Plaintiff's Application. Pursuant to Civil

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<sup>1</sup> All other named defendants in this matter have been dismissed, so Plaintiff seeks default judgment against Defendant as the only remaining defendant in the case. See ECF No. 141 ("Order Denying Appl.").

1 Local Rule 7-1(b), the Court finds this matter appropriate for  
2 resolution without oral argument.

3 For the reasons explained below, the Court GRANTS Plaintiff's  
4 unopposed application for default judgment against Centurion,  
5 ENTERS default judgment against Centurion, and AWARDS Plaintiff  
6 money damages in the full amount sought: \$1,918,348.60.

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8 **II. BACKGROUND**

9 Plaintiff is an ocean carrier and common carrier of goods for  
10 hire between the United States and foreign ports. ECF No. 35  
11 ("SAC") ¶ 3. Defendant is a non-vessel operating common carrier.  
12 Id. ¶ 4. Plaintiff alleges that it had contracted with Defendant  
13 to ship goods to and from the United States and foreign ports at  
14 various times between December 2008 and June 2010. Id. ¶¶ 8-11.  
15 All of the shipping arrangements between Plaintiff and Defendant  
16 were governed by an array of bills of lading, tariffs, and service  
17 contracts ("Agreements"). Id. The Agreements required Defendant  
18 to pay Plaintiff the entire amounts of freight due under the  
19 Agreements for each shipment. See id.

20 After a long period of nonpayment, Plaintiff sued Defendant  
21 for \$918,348.60 in unpaid contractual fees under the Agreements.  
22 See id. ¶ 21. Separately, Plaintiff alleges that Defendant  
23 fraudulently caused Plaintiff to pay more than \$1,000,000 in  
24 trucking charges as part of the shipping arrangements it had made  
25 with Plaintiff under the Agreements. Id. ¶¶ 27-35.

26 Defendant never appeared in this action, and the Clerk of  
27 Court entered default at the Court's direction on January 25, 2012.  
28 ECF No. 88 ("Jan. 25 Order"); ECF No. 89 ("Entry of Default").

1 Plaintiff filed the instant Application on September 7, 2012. On  
2 December 27, 2012, the Court denied the Application because  
3 Plaintiff did not file proof that it had served Defendant with the  
4 Application. Order Denying Appl. at 1-2. The Court required  
5 Plaintiff to file the requested proof within twenty-one days of  
6 that order's signature date, and allowed ten days from the date of  
7 such service for Defendant to file a response. Id. at 2.  
8 Plaintiff filed the requested proof and Defendant did not respond.  
9 See ECF No. 142 ("Proof of Service"). Accordingly, Plaintiff now  
10 moves for entry of default judgment against Defendant.

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12 **III. LEGAL STANDARD**

13 After entry of default, the Court may enter a default  
14 judgment. Fed. R. Civ. P. 55(b)(2). Its decision whether to do  
15 so, while "discretionary," Aldabe v. Aldabe, 616 F.2d 1089, 1092  
16 (9th Cir. 1980), is guided by several factors. As a preliminary  
17 matter, the Court must "assess the adequacy of the service of  
18 process on the party against whom default judgment is requested."  
19 Bd. of Trs. of the N. Cal. Sheet Metal Workers v. Peters, No. C-00-  
20 0395 VRW, 2000 U.S. Dist. LEXIS 19065, at \*2 (N.D. Cal. Jan. 2,  
21 2001).

22 If the Court determines that service was sufficient, it should  
23 consider whether the following factors support the entry of default  
24 judgment: (1) the possibility of prejudice to the plaintiff; (2)  
25 the merits of a plaintiff's substantive claim; (3) the sufficiency  
26 of the complaint; (4) the sum of money at stake in the action; (5)  
27 the possibility of a dispute concerning material facts; (6) whether  
28 the default was due to excusable neglect; and (7) the strong policy

1 underlying the Federal Rules of Civil Procedure favoring decisions  
2 on the merits. Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir.  
3 1986). "The general rule of law is that upon default the factual  
4 allegations of the complaint, except those relating to the amount  
5 of damages, will be taken as true." Geddes v. United Fin. Group,  
6 559 F.2d 557, 560 (9th Cir. 1977). However, "necessary facts not  
7 contained in the pleadings, and claims which are legally  
8 insufficient, are not established by default." Cripps v. Life Ins.  
9 Co., 980 F.2d 1261, 1267 (9th Cir. 1992).

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11 **IV. DISCUSSION**

12 **A. Procedural Requirements**

13 Before the Court may consider whether to exercise its  
14 discretion to enter default judgment, it must be satisfied that the  
15 procedural prerequisites, including adequate service of process,  
16 have been met. See, e.g., PepsiCo, Inc. v. California Sec. Cans,  
17 238 F. Supp. 2d 1172, 1175 (C.D. Cal. 2002). Here, they have. The  
18 Court has already ruled that Plaintiff perfected service on  
19 Defendant in this action as of September 26, 2011. Jan. 25 Order  
20 at 3. The only deficiency in Plaintiff's application was a failure  
21 to file proof that the Application had been served on Defendant.  
22 Order Denying Appl. at 2. Plaintiff has now shown that the  
23 Application and the Court's order denying Plaintiff's first  
24 Application were properly served on Defendant, and Defendant has  
25 still not appeared in this action. ECF No. 142. Moreover,  
26 Defendant, as a corporate entity, is not "a minor or incompetent  
27 person," and is not otherwise precluded from having default  
28 judgment entered against it. Fed. R. Civ. P. 55(b)(2). Nor does

1 the default judgment sought against Centurion "differ in kind from,  
2 or exceed in amount" what Plaintiff demanded in its Second Amended  
3 Complaint. Fed. R. Civ. P. 54(c).

4 The Court concludes that the procedural requisites of entering  
5 default judgment are satisfied here and therefore proceeds to  
6 considering whether to exercise its discretion to enter default  
7 judgment against Centurion in light of the Eitel factors.

8 **B. Eitel Factors**

9 Applying the factors articulated by the Ninth Circuit in  
10 Eitel, the Court finds the factors weigh in favor of granting  
11 Plaintiff's Application.

12 The first factor considers whether the plaintiff would suffer  
13 prejudice if default judgment is not entered. See PepsiCo, 238 F.  
14 Supp. 2d at 1177. In general, where default has been entered  
15 against a defendant, a plaintiff has no other alternative by which  
16 to recover damages. Id. Therefore, the Court finds Plaintiff  
17 would be prejudiced if default judgment is not granted.

18 The second and third Eitel factors require that a plaintiff's  
19 allegations state a claim upon which it can recover. In the  
20 instant action, Plaintiff claims that Defendant breached the terms  
21 of its Agreements with Plaintiff by failing to accurately label the  
22 contents of shipments, which resulted in underpayment to Plaintiff  
23 because the Agreements set rates based partly on the shipments'  
24 contents. Plaintiff further claims that Defendant misrepresented  
25 to Plaintiff the place of receipt of hundreds of shipments, thus  
26 inducing Plaintiff to pay for additional overland shipping that  
27 allegedly never occurred. Plaintiffs' allegations are sufficient  
28 to state claims for breach of contract under the Shipping Act, as

1 well as misrepresentation. Accordingly, the Court finds that the  
2 second and third Eitel factors weigh in favor of default judgment.

3 As to the fourth Eitel factor, the Court must consider "the  
4 amount of money at stake in relation to the seriousness of  
5 defendant's conduct." PepsiCo, 238 F. Supp. 2d at 1176. Here  
6 Plaintiffs seek a total of \$1,918,348.60, no mean sum. However,  
7 Plaintiff's damages are consistent with the amount owing under the  
8 Agreements, since \$918,348.60 of the total is based on the fees  
9 Defendant was required to pay Plaintiff, and the remaining  
10 \$1,000,000 comes from the fraudulent trucking fees that Defendant  
11 tricked Plaintiff into paying, all amounts that Plaintiff proves  
12 through documentation and declaration of its employees. See SAC ¶¶  
13 22-35; ECF No. 134 ("Gaskins-Kennedy Decl.") (totaling unpaid  
14 fees); ECF Nos. 135-36 ("Minck Decls.") (totaling fraudulent  
15 trucking charges). The Court finds that this factor weighs in  
16 favor of the entry of default judgment.

17 With respect to the fifth Eitel factor, the material facts of  
18 the instant case are not reasonably likely to be subject to  
19 dispute. Plaintiff has pled factual allegations and provided  
20 declarations supporting both their liability and damages claims.  
21 Additionally, as the Court may assume the truth of the facts pled  
22 in the Complaint (except with respect to damages) after the clerk's  
23 entry of default, it is unlikely that any genuine issue of material  
24 fact exists. See Geddes, 559 F.2d at 560. Defendant's failure to  
25 answer Plaintiff's complaint or respond to Plaintiff's Application  
26 for Default Judgment further supports this conclusion. Thus, the  
27 Court finds that this factor weighs in favor of entry of default  
28 judgment.

1 As to the sixth factor, there is no support for finding that  
2 Defendant's default is due to excusable neglect. Defendant was  
3 served with the complaint and summons in this action over a year  
4 ago and has yet to enter an appearance. In such circumstances,  
5 default cannot be attributed to excusable neglect. See Shanghai  
6 Automation Instrument Co. v. Kuei, 194 F. Supp. 2d 995, 1005 (N.D.  
7 Cal. 2001). The Court finds that this factor supports entry of  
8 default judgment.

9 The final Eitel factor, underscoring the policy favoring  
10 decisions on the merits, does not save this action from default  
11 judgment. This policy is not dispositive and "Defendant's failure  
12 to answer Plaintiff['s] Complaint makes a decision on the merits  
13 impractical, if not impossible." PepsiCo, 238 F. Supp. 2d at 11.

14 **C. Damages**

15 Plaintiff seeks damages based on Defendant's unpaid fees and  
16 fraudulent trucking charges. Plaintiff must "prove up" these  
17 damages with evidence. Orange Co. Elec. Ind. Health & Welfare  
18 Trust Fund v. Moore Elec. Contracting, Inc., No. 11-CV-00942-LHK,  
19 2012 WL 1623236, at \*2 (N.D. Cal. May 8, 2012).

20 After reviewing the Application and the evidence submitted,  
21 the Court finds that the amount sought by Plaintiff is appropriate.  
22 Plaintiff provided adequate evidence supporting the amount of  
23 unpaid fees owing under the Agreements prior to the filing of the  
24 instant action, including a declaration from Frances Gaskins-  
25 Kennedy, Plaintiff's outside auditor in charge of auditing the  
26 Agreements and accounts of Plaintiff and Defendant. Gaskins-  
27 Kennedy Decl. ¶¶ 1-9. Ms. Gaskins-Kennedy's declaration includes  
28 an explanation of the auditing process that led to the discovery of

1 Defendant's unpaid fees. Id. Plaintiff also included a  
2 declaration from Warrin Minck, Plaintiff's senior internal auditor,  
3 who examined Plaintiff's documents related to the fraudulent  
4 trucking shipments and provided the total amount Plaintiff paid for  
5 the fraudulent shipments. Minck Decl. ¶¶ 1-9, Exs. A-G. These  
6 documents comport with the amount Plaintiff requests in its  
7 Application and are sufficient to prove up Plaintiff's damages.

8 **D. Remaining Issues**

9 Prior to issuing this Order, the Court requested that  
10 Plaintiff also provide briefing on issues of joint and several  
11 liability, as well as the possibility that this judgment could  
12 result in double recovery based on the Court's findings of fact and  
13 conclusions of law in two recently decided cases, 10-cv-05591-SC  
14 (the "'91 Case") and 11-cv-02861-SC (collectively the "Decided  
15 Cases"), against other defendants for claims similar to those  
16 Plaintiff asserted against Defendant in this matter. ECF No. 145.  
17 The Court reviewed Plaintiff's and Decided Cases Defendants  
18 Seamaster Logistics and Summit Logistics International's briefs on  
19 those issues. ECF No. 146; '91 Case ECF No. 217. The Court is  
20 satisfied that entering default judgment in the amount requested  
21 here will not result in a double recovery for Plaintiff. However,  
22 the Court declines to find joint and several liability among  
23 Defendant in this matter and any defendants in the Decided Cases,  
24 since Plaintiff provides no legal justification for doing so. To  
25 find such liability when those defendants did not litigate this  
26 issue would be a breach of due process.

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**V. CONCLUSION**

For the reasons described above, the Court GRANTS Plaintiff Mitsui O.S.K. Lines, Ltd.'s Application for Default Judgment against Defendant Centurion Logistics Services, Ltd., ENTERS default judgment against Defendant, and AWARDS Plaintiff money damages in the full amount sought: \$1,918,348.60.

IT IS SO ORDERED.

Dated: June 7, 2013



UNITED STATES DISTRICT JUDGE