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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DEREK FRELIGH,  
Plaintiff,  
v.  
ROC ASSET SOLUTIONS, LLC,  
Defendant.

Case No. [16-cv-00653-MEJ](#)  
**NOTICE RE: DEFAULT JUDGMENT  
PROCEDURE**

As the Clerk of Court has entered default against Defendant ROC Asset Solutions, LLC (see Dkt. No. 9), the Court provides this notice to the parties regarding any default judgment motions filed pursuant to Federal Rule of Civil Procedure 55(b)(2). All motions shall be filed in compliance with Civil Local Rule 7, be structured as outlined in Attachment A below, and include all relevant legal authority and analysis necessary to establish the case. If no opposition is filed by the deadline under Rule 7, the moving party shall instead file proposed findings of fact and conclusions of law (as outlined in Attachment A) by the reply deadline under Rule 7. The moving party shall also email the proposed findings in Microsoft Word format to mejpo@cand.uscourts.gov. No chambers copies of the proposed findings need to be submitted.

**IT IS SO ORDERED.**

Dated: May 3, 2016

  
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MARIA-ELENA JAMES  
United States Magistrate Judge

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# ATTACHMENT A

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## INTRODUCTION

*(Relief sought and disposition.)*

## BACKGROUND

*(The pertinent factual and procedural background, including citations to the Complaint and record. Plaintiff(s) should be mindful that only facts in the Complaint are taken as true for purposes of default judgment, except for damages; therefore, Plaintiff(s) should cite to the Complaint whenever possible.)*

## DISCUSSION

### A. Jurisdiction and Service of Process

*(Include the following standard)*

In considering whether to enter default judgment, a district court must first determine whether it has jurisdiction over the subject matter and the parties to the case. *In re Tuli*, 172 F.3d 707, 712 (9th Cir. 1999) (“When entry of judgment is sought against a party who has failed to plead or otherwise defend, a district court has an affirmative duty to look into its jurisdiction over both the subject matter and the parties.”).

#### 1. Subject Matter Jurisdiction

*(Establish the basis for the Court’s subject matter jurisdiction, including citations to relevant case law and United States Code provisions.)*

#### 2. Personal Jurisdiction

*(Establish the basis for the Court’s personal jurisdiction, including citations to relevant legal authority, specific to each defendant. If seeking default judgment against any out-of-state defendants, this shall include a minimum contacts analysis under Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797, 802 (9th Cir. 2004)).*

#### 3. Service of Process

*(Establish the adequacy of the service of process on the party against whom default is requested,*

1 *including relevant provisions of Federal Rule of Civil Procedure 4.)*

2 **B. Legal Standard**

3 *(Include the following standard)*

4 Federal Rule of Civil Procedure 55(b)(2) permits a court, following default by a defendant,  
5 to enter default judgment in a case. “The district court’s decision whether to enter default  
6 judgment is a discretionary one.” *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). In  
7 determining whether default judgment is appropriate, the Ninth Circuit has enumerated the  
8 following factors for the court to consider: (1) the possibility of prejudice to the plaintiff; (2) the  
9 merits of plaintiff’s substantive claim; (3) the sufficiency of the complaint; (4) the sum of money  
10 at stake in the action; (5) the possibility of dispute concerning material facts; (6) whether default  
11 was due to excusable neglect; and (7) the strong policy underlying the Federal Rules of Civil  
12 Procedure favoring decisions on the merits. *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir.  
13 1986). Where a default judgment is granted, the scope of relief is limited by Federal Rule of Civil  
14 Procedure 54(c), which states that a “default judgment must not differ in kind from, or exceed in  
15 amount, what is demanded in the pleadings.” Upon entry of default, all factual allegations within  
16 the complaint are accepted as true, except those allegations relating to the amount of damages.  
17 *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

18 **C. Application to the Case at Bar**

19 *(A detailed analysis of each individual Eitel factor, separated by numbered headings. Factors 2*  
20 *(merits of substantive claims) and 3 (sufficiency of complaint) may be listed and analyzed under*  
21 *one heading. Plaintiff(s) shall include citations to cases that are factually similar, preferably*  
22 *within the Ninth Circuit.)*

23 **D. Relief Sought**

24 *(An analysis of any relief sought, including a calculation of damages, attorneys’ fees, etc., with*  
25 *citations to relevant legal authority.)*

26 1. Damages

27 *(As damages alleged in the complaint are not accepted as true, the proposed findings must*  
28 *provide (a) legal authority establishing entitlement to such damages, and (b) citations to evidence*

