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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

TERRACE ELLIS,

Plaintiff,

v.

RENEWABLE ENERGY CENTER, LLC, et  
al.,

Defendants.

Case No.17-cv-00497-HRL

**ORDER SETTING ASIDE ENTRY OF  
DEFAULT**

Re: Dkt. Nos. 25, 26

Pro se plaintiff Terrace Ellis (“Ellis”) sues defendants Renewable Energy Center, LLC, d/b/a National Renewable Energy Center and Energy Enterprise USA, Inc., d/b/a National Renewable Energy Center (“Energy Enterprise USA”) for violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227 (“TCPA”). Ellis requested, and the clerk entered, default as to Energy Enterprise USA. Dkt. Nos. 23, 25. Now, Ellis moves the Court for an entry of default judgment as to Energy Enterprise USA.

The Court determined that the matter was fit for determination without oral argument. Civil L.R. 7-2(b). The Court hereby sets aside the entry of default as to Energy Enterprise USA. Fed. R. Civ. P. 55(c). There being no valid entry of default, the Court terminates the motion for default judgment as moot.

**I. BACKGROUND**

Ellis filed her initial complaint in January 2017, naming “National Renewable Energy Center” (“NREC”) as the defendant. In the months that followed, Ellis encountered a “confusing array of information” about a group of business entities that all seemed to operate under the NREC name. See Dkt. No. 17 ¶ 18. Ultimately, in June, Ellis filed a second amended complaint (SAC) naming two defendants, one of which was Energy Enterprise USA. Dkt. No. 17. Ellis alleged that

1 Energy Enterprise USA is a California corporation, and that its president is Ofir Attal. Dkt. No.  
2 17 ¶ 7. Ellis further alleged that Energy Enterprise USA’s principal place of business is at 5632  
3 Van Nuys Blvd., Suite 36, Van Nuys, California.

4 According to a proof of service document filed by Ellis, she had the summons and  
5 complaint mailed to a person named “Ori Bytton,” whom she identified as the president of Energy  
6 Enterprise USA.<sup>1</sup> Dkt. No. 22. The process server separately averred that he mailed the summons  
7 and complaint to Energy Enterprise USA, care of “Ori Byrron.” *Id.* Ellis also had the summons  
8 and complaint left with Robert Landrum, the person in charge at the 5632 Van Nuys Blvd.  
9 location, which apparently is a personal mailbox rental store. *Id.* Neither the SAC, nor the proof  
10 of service document, nor the motion for default judgment provide any indication as to who Ori  
11 Bytton/Byrron is, or why that person, rather than Ofir Attal, was served in his or her capacity as  
12 president of Energy Enterprise USA.<sup>2</sup>

13 Ellis later requested, and the Clerk entered, default as to Energy Enterprise USA. Dkt.  
14 Nos. 23, 25. Ellis then moved for default judgment.. Dkt. No. 26.

## 15 **II. DISCUSSION**

16 Before entering a default judgment, a district court must first review whether subject  
17 matter and personal jurisdiction exist. *In re Tuli*, 172 F.3d 707, 712 (9th Cir. 1999). A party must  
18 be properly served before a federal court may exercise personal jurisdiction over it. *See Jackson v.*  
19 *Hayakawa*, 682 F.2d 1334, 1347 (9th Cir. 1982).

20 Here, the Court has subject matter jurisdiction over Ellis’ claim because her TCPA claim  
21 arises under federal law. *Mims v. Arrow Financial Services, LLC*, 565 U.S. 368 (2012) (TCPA  
22 private right of action arises under federal law). As to personal jurisdiction, however, the  
23 undersigned is not satisfied that Energy Enterprise USA was properly served.

24 The Federal Rules of Civil Procedure do not allow for service of process via mail. *See*

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26 <sup>1</sup> The proof of service document identifies the party served as “ENERGY ENTERPRISW USA  
27 INC., dba National Renewable Energy Center.”

28 <sup>2</sup> Ellis later had the summons and complaint, and the request for entry of default, mailed to an  
alternative address for Energy Enterprise USA at 6736 Vesper Ave., Van Nuys, California. Dkt.  
No. 26 at 7.

1 Fed. R. Civ. P. 4(e). However, the Federal Rules allow a defendant corporation to be served by  
2 any method authorized by the law of the state in which the district court sits. Fed. R. Civ. P.  
3 4(e)(1), (h)(1)(A). California Civil Procedure Code section 415.30 sets out the requirements for  
4 serving a defendant by mail. Section 416.10(b) states that a corporation can be served by  
5 delivering a copy of the summons and complaint to, among others, the corporation's president.

6 In the SAC, Ellis alleged that Energy Enterprise USA is a "California company." Dkt.  
7 No. 17 ¶ 7. In the default judgment motion, Ellis confusingly states that "Defendant is  
8 incorporated, and is not registered with California's Secretary of State." Dkt. No. 26 at 11.  
9 Assuming that Energy Enterprise USA is a California corporation, service would be valid if Ellis  
10 served the company's president.

11 Here, however, it is not clear who Energy Enterprise USA's president is, or who Ellis  
12 served with the summons and complaint. In her default judgment motion, Ellis alleges that Afir  
13 Ottal is Energy Enterprise USA's president, and that service was proper because the summons and  
14 complaint were served upon him (or her). Dkt. No. 26 at 11. These allegations might be  
15 sufficient to form the basis of a default judgment were it not for the contradictory statements in the  
16 proof of service document. *See TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir.  
17 1987) ("The general rule of law is that upon default the factual allegations of the complaint, except  
18 those relating to the amount of damages, will be taken as true.") (citation omitted). The  
19 discrepancies here, however, are too serious to ignore. Ellis does not account for why, according  
20 to the proof of service document, the summons and complaint were served on someone named Ori  
21 Bytton/Byrron, and she fails to explain who that person is or what his or her relationship is to Afir  
22 Ottal and Energy Enterprise USA. Further, leaving a copy of the summons and complaint with  
23 Robert Landrum, the person who worked at the mailbox rental shop, is not adequate to complete  
24 service on Energy Enterprise USA, as there is no evidence that Landrum has any direct  
25 relationship to the defendant.

26 **III. CONCLUSION**

27 The Court is not satisfied that Energy Enterprise USA was properly served with the  
28 summons and complaint. Accordingly, the Court sets aside the entry of default as to Energy


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Enterprise USA. Fed. R. Civ. P. 55(c). There being no valid entry of default, the Court terminates Ellis' motion for default judgment as moot.

This order is issued without prejudice to Ellis moving for default judgment in the future. If Ellis properly serves Energy Enterprise USA pursuant to California Civil Procedure Code sections 415.30 and 416.10(b), or pursuant to any other method authorized by the Federal Rules, and the defendant defaults, Ellis may again request that the Court enter a default judgment.

**IT IS SO ORDERED.**

Dated: November 27, 2017



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HOWARD R. LLOYD  
United States Magistrate Judge