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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

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SECURITIES AND EXCHANGE  
COMMISSION,

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vs.

Plaintiff,

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JAMES Y. LEE, et al.

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Defendants.

CASE NO. 14cv347-LAB (BGS)

**ORDER REQUIRING AMENDED  
PROOF OF SERVICE OR RE-  
SERVICE ON DEFENDANTS;  
AND**

**ORDER PERMITTING LATE  
OPPOSITION TO MOTION FOR  
DEFAULT JUDGMENT**

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Defendants Clayton Lee, Advanced Century Corp., Lolita Gatchalian, and Ultra International, Inc. waived service in this case (see Docket nos. 7, 8, 10, 11) and are properly before this Court. Default has been entered against each of them. (Docket no. 20.) On March 17, 2015, the SEC filed a motion for default judgment as to all Defendants. The Court on March 19 ordered Defendants to show cause why the motion should not be granted. That same order required counsel for the SEC to promptly serve all defendants with the motion, as well as the order itself, and to file proof of service. Several other Defendants have opposed the motion for default judgment, but Clayton Lee, Advanced Century, Gatchalian, and Ultra have not.

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Under Fed. R. Civ. P. 55(b)(2), written notice of an application for default judgment must be served on parties who have appeared in the action. Because these four Defendants have not appeared, service of the motion is not required by rule. But the Court considers it

1 is appropriate here, if possible. A great deal of money is at stake in this case.<sup>1</sup> This, together  
2 with the possibility of excusable neglect in failing to oppose the motion are factors the Court  
3 would consider when deciding whether to grant it. *See Eitel v. McCool*, 782 F.2d 1470,  
4 1471–72 (9<sup>th</sup> Cir. 1986). The Court is also mindful of the strong policy favoring decisions on  
5 the merits, rather than by default. *See id.*

6 **Clayton Lee and Advanced Century Corp.**

7 The proofs of service show that Clayton Lee and Advanced Century (for whom  
8 Clayton Lee is the agent) were served with the Court’s order, but they fail to show these two  
9 were served with the motion. The other Defendants disputed whether the person served was  
10 actually Clayton Lee<sup>2</sup> but it does not matter. Fed. R. Civ. P. 4(e)(2)(B) allows service by  
11 leaving a copy of the papers to be served at the individual’s dwelling with someone of  
12 suitable age and discretion. Rule 4(e)(1) allows service by a method that would be  
13 acceptable under state law. Under the circumstances, the method of service here also  
14 suffices under Cal. Civ. Proc. Code § 415.20(a). Under either provision, service appears to  
15 have been properly carried out. As for Advanced Century, under Fed. R. Civ. P. 4(h)(1)(A),  
16 it may be served in the same way as an individual can be served under state law. Because  
17 the SEC met Cal. Civ. Proc. Code § 415.20(a)’s requirements by delivering the papers to a  
18 responsible person at Clayton Lee’s home at a time when Lee himself could not be served  
19 personally, Advanced Century was also served.

20 It is not clear whether Clayton Lee and Advanced Century were actually served with  
21 the motion for summary judgment and the proof of service simply failed to note it, or whether  
22 they were not served with it. If they were served, the SEC must promptly file amended proof

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24 <sup>1</sup> The motion for default judgment seeks a total of \$756,526.41 from Advanced  
25 Century, \$148,758.62 from Ultra, \$103,321.60 from Clayton Lee, and \$77,349.81 from  
Gatchalian. (Docket no. 46-3 at 20, 22, 50, 77.)

26 <sup>2</sup> Clayton Lee did not seek to quash service, though he did provide an affidavit that  
27 other Defendants relied on in their motion seeking an extension fo time to file an opposition  
28 to the motion for default judgment. His affidavit says he was away from home until late at  
night on the day the proof of service says he was served, and that he does not match the  
description of the person served. It does not say whether anyone else, such as a relative,  
was or might have been at home.

1 of service showing that. See Fed. R. Civ. P. 4(l)(3) (providing that failure to prove service  
2 does not affect the validity of service, and that a court may permit proof of service to be  
3 amended). If they were never served with the motion, the SEC shall do so, and shall  
4 promptly file proof of service.

5 **Lolita Gatchalian and Ultra International, Inc.**

6 The affidavit accompanying proof of service makes clear the SEC made multiple  
7 attempts to serve Gatchalian, both individually and as agent for Ultra, and it appears she  
8 studiously avoided contact with them, although it is unclear whether she was avoiding  
9 contact with them in particular. In the end, its counsel sent the documents to be served to  
10 Irving Einhorn, Esq., who has represented her in this action, although he has never made an  
11 appearance. (See Docket no. 46-3 at 80 (deposition transcript showing Irving Einhorn  
12 representing Gatchalian at a deposition in this case).)

13 Under California law, if papers cannot with reasonable diligence be delivered to a  
14 party personally, they may be left with someone whose relationship to the party makes it  
15 more likely than not that the papers will be delivered. See *Bein v. Brechtel-Jochim Group,*  
16 *Inc.*, 6 Cal. App.4th 1387, 1393–94 (Cal. App. 4 Dist. 1992). Bearing in mind that service  
17 here was not required but was ordered as a precaution, the Court finds that Gatchalian and  
18 Ultra have been given adequate notice of the pending motion for default judgment, and the  
19 SEC is excused from further efforts to serve them.

20 **Conclusion and Order**

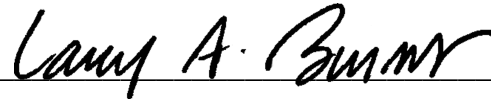
21 Concurrently with this order, the Court is issuing an order taking the motion for default  
22 judgment under submission as to Clayton Lee, Advanced Century, Gatchalian, and Ultra  
23 International. But in the interests of avoiding, if possible, a judgment by default, the Court will  
24 entertain a late opposition to the motion for default judgment **If Clayton Lee, Advanced**  
25 **Century, Gatchalian, and/or Ultra International wish to oppose the motion for default**  
26 **judgment, they must file an opposition by May 4, 2015.** If the Court hears nothing from  
27 them by that time, it will assume they do not intend to oppose the motion.

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1           The Clerk shall mail a copy of this order to Clayton Lee, Advanced Century Corp.,  
2 Lolita Gatchalian, Ultra International, and Irving Einhorn at the addresses provided in Docket  
3 no. 48.

4                           **IT IS SO ORDERED.**

5 DATED: April 22, 2015

A handwritten signature in black ink, reading "Larry A. Burns", written over a horizontal line.

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7                           **HONORABLE LARRY ALAN BURNS**  
                              United States District Judge

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