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

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

vs.

JAMES Y. LEE, et al.,

Defendants.

CASE NO. 14cv347-LAB (BGS)

**ORDER DENYING MOTION FOR  
ORAL ARGUMENT;**

**ORDER DENYING MOTION FOR  
DEFAULT JUDGMENT; AND**

**ORDER RESETTING FINAL  
PRETRIAL CONFERENCE**

**Background**

This is one of three related civil cases pertaining to a fraudulent investment scheme. In a criminal case, Defendant James Y. Lee pled guilty to obstructing justice and admitted various acts of securities fraud. In case 14cv1737, *S.E.C. v. Lee*, James Y. Lee was ordered to disgorge over \$2 million. The third case, 14cv542, *Ayers v. Lee*, is brought by investors.

In this case, the Securities and Exchange Commission (SEC) is suing not only James Lee, but also relief defendants Larissa Ettore, ELX International, Clayton Lee, Advanced Century Corp., Lolita Gatchalian, Ultra International Inc., and SOT Group, Inc. When Defendants failed to respond to the complaint, the case stalled. In response to the Court's order to show cause, the United States obtained an entry of default against all Defendants,

1 and filed a motion for default judgment (Docket no. 46), as well as a motion for oral  
2 argument (Docket no. 60).

3 The default judgment motion asks the Court to award relief against both James Lee  
4 and the relief defendants. It asks that the relief defendants be ordered to disgorge  
5 substantial amounts of money they are alleged to have received as a result of James Lee's  
6 fraud, plus prejudgment interest, as follows:

- 7 1. ELX: \$1,024,491.55
- 8 2. SOT: \$943,045.16
- 9 3. Advanced Century: \$756,526.41
- 10 4. Ultra: \$148,758.62
- 11 5. Ettore: \$386,694.25
- 12 6. Clayton Lee: \$103,321.60
- 13 7. Gatchalian: \$77,410.83

14 Defendants filed a joint opposition to the motion for default judgment. The relief defendants  
15 argue both that they are not responsible for James Lee's wrongdoing, and also that the  
16 amount being sought from them is inflated. Some ask that the disgorgement be reduced,  
17 and some ask that they not be ordered to disgorge anything. They also argue that, because  
18 there was no scienter on their part, they be relieved of any obligation to pay prejudgment  
19 interest. In short, some of them are willing to pay some of the requested disgorgement, but  
20 not all of it. The opposition denies James Lee's liability, and asks that the Court not award  
21 a civil penalty or prejudgment interest.

22 The interactions of this case, case 14cv1737, and the criminal case are complex. It  
23 is likely most if not all of James Lee's arguments are subsumed within the judgment entered  
24 in case 14cv1737, and many of his arguments against liability may be barred by his plea  
25 agreement.

## 26 **Legal Standard**

27 Under Fed. R. Civ. P. 55(b)(2), the Court may enter default judgment and, if  
28 necessary, conduct an accounting, determine the amount of damages, receive and consider

1 evidence to establish the truth of any allegation, or investigate other matters. The decision  
2 to grant default judgment is within the Court's discretion. See *Eitel v. McCool*, 782 F.2d  
3 1470, 1471 (9th Cir. 1986). "Factors which may be considered by courts in exercising  
4 discretion as to the entry of a default judgment include: (1) the possibility of prejudice to the  
5 plaintiff, (2) the merits of plaintiff's substantive claim, (3) the sufficiency of the complaint, (4)  
6 the sum of money at stake in the action; (5) the possibility of a dispute concerning material  
7 facts; (6) whether the default was due to excusable neglect, and (7) the strong policy  
8 underlying the Federal Rules of Civil Procedure favoring decisions on the merits." *Id.* at  
9 1471-72.

## 10 Discussion

### 11 Excusable Neglect and Policy Favoring Decisions on the Merits

12 One difference between this case and most cases in which default judgment is sought  
13 is that here, Defendants have appeared and are actively trying to defend. The principal  
14 reason for the United States' filing of the default judgment motion is that, while a few of the  
15 relief defendants took some steps to defend, most did nothing. And those that were taking  
16 steps, did little. For example, they filed no dispositive motions in order to raise the defenses  
17 they now raise in their opposition. They have offered no explanation for waiting until facing  
18 to default to raise these defenses, or for their neglect more generally.

### 19 The Merits: *Eitel* Factors 2, 3, and 5

20 The most difficult of the *Eitel* factors are the second, third and fifth, all of which go to  
21 the merits of the case. The briefing on the motion is lengthy and complex, and is  
22 complicated further by proceedings in other cases. While the Court has taken time to review  
23 it carefully, it is unclear whether the disputes are ripe for decision and ought to be decided  
24 on the basis of the briefing, or whether a hearing or even a trial is necessary. Without going  
25 into detail, the pleadings raise factual disputes regarding scienter, the traceability of funds,  
26 the degree to which the relief defendants may have given value for the funds they received,  
27 and other issues.

28 ///

1 As a general matter, if all disputes can be fairly and adequately resolved on the basis  
2 of pleadings already filed, it is preferable to do so. And under Fed. R. Civ. P. 55(b)(2), the  
3 Court has the power to decide all matters necessary to enter or effectuate judgment, even  
4 if it needs to hold hearings. That being said, at this point there would be little difference  
5 between the types of hearings necessary to resolve factual disputes and a full trial. Bearing  
6 in mind the kinds of disputes the Court would need to resolve, it does not appear much more  
7 efficient to resolve these disputes via hearings on a motion for default judgment than it would  
8 be to decide them on the merits after a trial.

### 9 **Danger of Unfair Prejudice to the United States**

10 The possibility of prejudice to the United States does not appear to be very great if  
11 default judgment is denied. While proceeding to trial rather than granting default judgment  
12 would result in somewhat greater expense to the United States, it would not be deprived of  
13 a final judgment or a recovery. There is of course no way now to know whether the recovery  
14 after trial would be the same as recovery via default judgment. The danger of unfair  
15 prejudice to the United States, to the extent it can be ascertained, appears to be minimal.

### 16 **Amount of Money at Stake**

17 The entire amount the United States seeks is not contested; Defendants only ask that  
18 it be reduced. Still, the amount by which it would be reduced if Defendants' arguments were  
19 to prevail is substantial. For example, Ms. Ettore asks that her disgorgement obligation be  
20 reduced by over \$260,000 and her personal liability be limited to just under \$80,000.  
21 Clayton Lee asks that the over \$100,000 in disgorgement sought against him be reduced  
22 to his interest in a 2007 Mercedes. Ms. Gatchalian asks that the entire \$70,000 sought in  
23 disgorgement be remitted. SOT asks that the full \$873,922 sought in disgorgement be  
24 remitted. ELX asks that its disgorgement be reduced by nearly half, to just under \$551,000.  
25 James Lee did not object, but presumably joined in the request for lower prejudgment  
26 interest.

27 The difference between the amount sought by default judgment and the amount the  
28 relief say they should be required to disgorge is well over \$1.5 million, which easily qualifies

1 as substantial. The fact that a large sum of money is at stake tends to disfavor default  
2 judgment, particularly when material facts are in dispute. *Eitel*, 782 F.2d at 1472.

3 **Weighing the Factors**

4 Except for excusable neglect, all the *Eitel* factors weigh against entry of default. In  
5 particular, the Court is mindful of the strong policy disfavoring judgments by default. “Cases  
6 should be decided upon their merits whenever reasonably possible.” *Eitel*, 782 F.2d at 1472  
7 (citing *Pena v. Seguros La Comercial, S.A.*, 770 F.2d 811, 814 (9th Cir.1985)). Here, even  
8 if they neglected the case before, Defendants are now prepared to litigate it, and trying the  
9 case on the merits is practicable.

10 **Conclusion and Order**

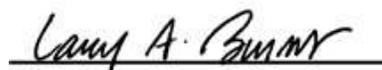
11 For these reasons, the motion for default judgment is **DENIED** and the motion for  
12 argument on the default judgment motion is **DENIED AS MOOT**.

13 Because the parties were given more time to file briefing, the pendency of these  
14 motions led the Court to vacate the pretrial conference. That conference is now  
15 **RESCHEDULED** for **Monday, June 13, 2016 at 12:00 noon**. The parties are directed to  
16 meet and confer and prepare a proposed final pretrial order, which should be lodged in  
17 editable electronic format no later than **May 31, 2016**. The proposed pretrial order should  
18 make clear to what degree, the claims against James Lee have already been adjudicated  
19 in case 14cv1737.

20 If the parties wish to discuss settlement or the possibility of consenting to having a  
21 magistrate judge try their case, they should contact the chambers of Magistrate Judge  
22 Bernard Skomal.

23  
24 **IT IS SO ORDERED.**

25 DATED: March 7, 2016

26 

27 **HONORABLE LARRY ALAN BURNS**  
28 United States District Judge