

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

ANSHU PATHAK,	)	Case No. 2:16-cv-02124-GMN-NJK
	)	
Plaintiff(s),	)	ORDER
	)	
vs.	)	(Docket No. 21)
	)	
SPECIALTY MEATS AND GOURMET LLC,	)	
	)	
Defendant(s).	)	

Pending before the Court is Plaintiff’s motion for entry of default judgment against Defendant Specialty Meats and Gourmet LLC. Docket No. 21. On January 9, 2017, a Clerk’s entry of default was entered as to Defendant. Docket No. 20. Once default has been entered, a plaintiff may apply to the Court for entry of default judgment pursuant to Federal Rule of Civil Procedure 55(b)(2). Whether to enter default judgment is at the sole discretion of the district court. *See Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980).

As a preliminary matter, default judgment is void if a court lacks personal jurisdiction over the defendant. *Pac. Atl. Trading Co. v. M/V Main Express*, 758 F.2d 1325, 1331 (9th Cir. 1985). The Court has a duty to examine its jurisdiction over the subject matter and the parties when default judgment is sought for failure to plead or otherwise defend. *Tuli v. Republic of Iraq*, 172 F.3d 707, 712 (9th Cir. 1998). The Court may therefore raise the issue of personal jurisdiction *sua sponte*. *Id.*

1 The Court is not persuaded, based on the facts before it, that it has personal jurisdiction over  
2 Defendant. See Docket No. 1. See also *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 881  
3 (2011) (consent to personal jurisdiction requires circumstances or conduct evincing “an intention to  
4 benefit from and thus an intention to submit to the laws of the forum State”); *Evanston Ins. Co. v.*  
5 *W. Cmty. Ins. Co.*, 13 F. Supp. 3d 1064, 1068-69 (D. Nev. 2014) (discussing personal jurisdiction  
6 standards at length). Plaintiff must first demonstrate that the Court has personal jurisdiction over  
7 Defendant, in order for the Court to grant a motion for default judgment. See *Tuli*, 172 F.3d at 712-  
8 13.

9 Even if Plaintiff is able to demonstrate that the Court has personal jurisdiction over  
10 Defendant, however, a defendant’s default alone does not entitle a plaintiff to a court-ordered  
11 judgment. See *Aldabe*, 616 F.2d at 1092. Rather, a court should look at seven discretionary factors  
12 before rendering a decision on default judgment. See *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th  
13 Cir. 1986). These factors are: (1) the possibility of prejudice to the plaintiff; (2) the merits of  
14 plaintiff’s substantive claim; (3) the sufficiency of the complaint; (4) the sum of money at stake in  
15 the action; (5) the possibility of a dispute concerning material facts; (6) whether the default was due  
16 to excusable neglect; and (7) the strong policy underlying the Federal Rules of Civil Procedure  
17 favoring decisions on the merits. *Id.* In applying these *Eitel* factors, “the factual allegations of the  
18 complaint, except those relating to the amount of damages, will be taken as true.” *Geddes v. United*  
19 *Fin. Grp.*, 559 F.2d 557, 560 (9th Cir. 1977); *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-  
20 18 (9th Cir. 1987). Plaintiff’s pending motion fails to address the *Eitel* factors, much less  
21 demonstrate that they have been met. See Docket No. 21.

22 A plaintiff seeking default judgment also has the burden of providing sufficient proof of his  
23 damages. See *NewGen, LLC v. Safe Cig*, 840 F.3d 606, 617 (9th Cir. 2016) (finding that district  
24 court’s calculation of damages was proper where it relied upon extensive evidence provided by the  
25 plaintiff); *Geddes*, 559 F.2d at 560; *Holiday Sys. Int’l of Nev. v. Vivarelli, Schwarz & Assocs.*, No.  
26 2:10-cv-00471-MMD-GWF, 2014 WL 204340, at \*2 (D. Nev. Jan. 17, 2014 (finding damages  
27

