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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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CRIMINAL PRODUCTIONS, INC., a
Nevada corporation,

Plaintiff,

v.

ALBERT BLANDINO, et al.,

Defendants.

Case No. 2:16-cv-2201-APG-VCF

**ORDER DENYING DEFENDANT'S
MOTION TO DISMISS AND
PLAINTIFF'S MOTION FOR DEFAULT
JUDGMENT**

(ECF Nos. 22, 24, 27)

11 On July 7, 2017, defendant Albert Blandino filed a "notice of dismiss," which I construe as
12 a motion to dismiss. ECF No. 24. However, prior to that (on June 23, 2017), the clerk of court
13 entered default against Blandino because he failed to timely plead or otherwise defend in this action.
14 ECF No. 22. Thus, Blandino's motion to dismiss was a rogue document; he should have moved to
15 set aside the default before moving to dismiss the complaint. I therefore deny Blandino's motion
16 to dismiss as improperly filed.

17 Plaintiff Criminal Productions, Inc. did not oppose Blandino's motion to dismiss. Rather,
18 it filed a motion for default judgment. ECF No. 27. "Entry of default does not entitle the non-
19 defaulting party to a default judgment as a matter of right." *Warner Bros. Entm't Inc. v. Caridi*, 346
20 F. Supp. 2d 1068, 1071 (C.D. Cal. 2004) (citation omitted). The "general rule [is] that default
21 judgments are ordinarily disfavored. Cases should be decided upon their merits whenever
22 reasonably possible." *Eitel v. McCool*, 782 F.2d 1470, 1472 (9th Cir. 1986) (citing *Pena v. Seguros*
23 *La Comercial, S.A.*, 770 F.2d 811, 814 (9th Cir. 1985)). Whether a default judgment will be granted
24 is within the district court's discretion. *Id.*

25 I consider the following factors in determining whether to grant a default judgment: (1)
26 the possibility of prejudice to the plaintiff; (2) the merits of the plaintiff's substantive claims; (3)
27 the sufficiency of the complaint; (4) the sum of money at stake in the action; (5) the possibility of
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1 a dispute concerning material facts; (6) whether the default was due to excusable neglect; and (7)
2 the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the
3 merits. *Id.* at 1471–72. These factors convince me not to enter default judgment against
4 Blandino.

5 Criminal’s Amended Complaint contains vague and generalized allegations against “each
6 Defendant,” but no allegations about Blandino’s specific wrongful acts. *See, e.g.*, ECF No. 7 at 6-
7 7 (Based on the investigator’s analysis of the Defendants’ IP addresses, each Defendant was a
8 participant in a “swarm,” “[e]ach Defendant had copied a piece of the Plaintiff’s copyrighted
9 Work . . . and [t]herefore, each Defendant was part of the same series of transactions.”).

10 Blandino’s motion and attached exhibits demonstrate that he may have a viable defense to
11 some or all of Criminal’s claims. For instance, Blandino contends that he gave his neighbor
12 access to his wireless internet connection, and this neighbor may have unlawfully downloaded
13 Criminal’s movie. ECF No. 24 at 1, 7. This may negate Criminal’s claim that Blandino
14 knowingly and willfully infringed Criminal’s rights or derived some benefit from the unlawful
15 download. ECF No. 7 at ¶¶ 47, 50, 58, 59, 65. Moreover, if Blandino’s allegations of near
16 poverty are true, the sum of money sought by Criminal could be considered extraordinarily
17 burdensome to Blandino. ECF No. 24 at 1.¹

18 Based on the *Eitel* factors, entry of default judgment is not warranted in this case. Given
19 that Blandino has appeared *pro se*, that he has articulated potential defenses to Criminal’s claims,
20 and that he was taking efforts to find an attorney and participate in this case (ECF No. 24 at 1), I
21 will set aside the default that was entered against him. I will refer Blandino to the court’s pro
22 bono program to determine whether a lawyer is willing to defend Blandino in this case. Blandino
23 is still responsible for filing an answer or other response to Criminal’s Amended Complaint, even
24 if no attorney will represent him. I will extend the deadline by which he must file an answer or

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28 ¹ While poverty is not a defense, the amount of the judgment sought is one of the *Eitel* factors I
must consider.

1 other response to 60 days from entry of this order, to afford him time to seek counsel through the
2 pro bono program or to prepare his response on his own.

3 IT IS THEREFORE ORDERED that defendant Blandino's motion to dismiss (ECF No.
4 24) is DENIED.

5 IT IS FURTHER ORDERED that the plaintiff's motion for default judgment (ECF No.
6 27) is DENIED.

7 IT IS FURTHER ORDERED that the clerk's entry of default (ECF No. 22) is
8 VACATED. Blandino will have until October 9, 2017 to file an answer or other response to the
9 plaintiff's Amended Complaint. By separate order, I will refer Blandino to the court's pro bono
10 program.

11 Dated: August 8, 2017.



12 ANDREW P. GORDON
13 UNITED STATES DISTRICT JUDGE
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