
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

ME2 PRODUCTIONS, INC.,

Plaintiffs,

v.

VAIPAPA TALIA, KRISTA WEBBER,
ARMANDO MEDINA, MARIA
FLORES, and NORMA/ERNESTO VEGA
LOPEZ,

Defendants.

**MEMORANDUM DECISION AND
ORDER DENYING ARMANDO
MEDINA’S MOTION TO DISMISS,
VACATING HIS DEFAULT, AND
SETTING DEADLINE TO ANSWER**

Case No. 2:17-cv-00179-DN

District Judge David Nuffer

Armando Medina, a pro se defendant, filed a Motion to Dismiss, which reads in full:

I, Armando Medina, representing myself without a lawyer, move to/for Case Dismissal under the following statute(s)/rule(s) (if known) _____ for the following reason(s): I request this case to be dismissed. I received a Hearing notification on 03/26/19 and the hearing was schedule[d] for 03/22/19. I never download[ed] any movie named Mechanic.¹

Plaintiff ME2 Productions Inc. (“ME2”) opposes this motion on the grounds that it is untimely because Medina’s default was entered on June 24, 2018, as a result of his failure to file a response to ME2’s complaint.² ME2 also opposes this motion on the grounds that its pleadings state a facially plausible claim for relief.

Although the clerk has entered Medina’s default, ME2 has not yet obtained a default judgment against him. And, while Medina did not file a response to ME2’s original complaint, ME2 recently filed an amended complaint against him on June 17, 2019. Under the

¹ [Docket no. 81](#), filed April 22, 2019.

² [Opposition to Motion to Dismiss of Armando Medina, docket no. 82](#), filed May 20, 2019.

circumstances, Medina's motion is not untimely and the clerk's entry of his default should be vacated *if* Medina files a timely response to ME2's amended complaint.⁶

However, the well-pleaded factual allegations set forth in ME2's amended complaint,³ when viewed in the light most favorable to ME2, state a facially plausible claim for relief.⁴ As a result, Medina's motion must be denied.

ORDER

THEREFORE, IT IS HEREBY ORDERED as follows:

1. The Motion to Dismiss is DENIED;⁵
2. If Medina files a response to the Amended Complaint for Copyright Infringement and Jury Demand⁶ by no later than *July 26, 2019*, the default certificate⁷ entered against Medina will be vacated. If no response is filed, ME2 may move for default judgment.

Signed July 8, 2019.

BY THE COURT:



David Nuffer
United States District Judge

³ Amended Complaint for Copyright Infringement and Jury Demand, [docket no. 46](#), filed June 17, 2019.

⁴ *See Mayfield v. Bethards*, 826 F.3d 1252, 1255 (10th Cir. 2016) (“To survive a motion to dismiss, a complaint must allege facts that, if true, state a claim to relief that is plausible on its face. A claim is facially plausible when the allegations give rise to a reasonable inference that the defendant is liable.” (internal quotation marks omitted)).

⁵ [Docket no. 81](#), filed April 22, 2019.

⁶ [Docket no. 83](#), filed June 17, 2019.

⁷ Entry of Default Pursuant to FRCP 55(a) as to Certain Defendants, [docket no. 46](#), filed June 4, 2018.