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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NINTENDO OF AMERICA INC.,

Plaintiff,

v.

JAMES C. WILLIAMS,

Defendant.

CASE NO. 2:24-cv-00960-LK

ORDER REQUESTING
SUPPLEMENTAL BRIEFING

This matter comes before the Court on Plaintiff Nintendo of America Inc.’s Request for Clerk’s Entry of Default. Dkt. No. 12. Nintendo requests that the Clerk enter the default of Defendant James C. Williams (a/k/a “Archbox”), whom Nintendo avers to have served in accordance with the Federal Rules of Civil Procedure but who has not appeared in this action, filed an answer, or otherwise responded to Nintendo’s complaint. *Id.* at 1. For the following reasons, the Court requests supplemental briefing from Nintendo.

Under Federal Rule of Civil Procedure 55(a), “[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party’s default.” This District’s Local Civil Rules

1 also require that the moving party submit an affidavit “specifically show[ing] that the defaulting
2 party was served in a manner authorized by [Federal Rule of Civil Procedure] 4.” LCR 55(a); *see*
3 *also Quinteros v. InnoGames*, No. C19-1402-RSM, 2020 WL 995854, at *2 (W.D. Wash. Mar. 2,
4 2020). Absent such a showing, the Clerk cannot “enter the default of any party against whom a
5 judgment for affirmative relief is sought but who has failed to plead or otherwise defend.” LCR
6 55(a).

7 Nintendo states that Williams “was duly served pursuant to [Federal Rule of Civil
8 Procedure] 4(e)(2)(B).” Dkt. No. 13 at 1–2. Rule 4(e)(2)(B) provides that “an individual . . . may
9 be served in a judicial district of the United States by . . . leaving a copy of [the summons and the
10 complaint] at the individual’s dwelling or usual place of abode with someone of suitable age and
11 discretion who resides there[.]” The plaintiff bears the burden of proving service of process.
12 *Brockmeyer v. May*, 383 F.3d 798, 801 (9th Cir. 2004); *United States v. Barajas*, No. 22-cv-00418-
13 JSC, 2022 WL 6251017, at *2 (N.D. Cal. Sept. 21, 2022) (“[P]laintiff must demonstrate it has met
14 its burden of demonstrating legally sufficient service of process in accordance with the
15 requirements of Rule 4.” (internal quotation marks omitted)).

16 Here, Nintendo represents that it provided the summons and its complaint “to a licensed
17 process server with instructions to personally serve [Williams] at his last known residence.” Dkt.
18 No. 13 at 1. The process server declared in an affidavit that he “left the summons . . . with Jane
19 Doe, a person of suitable age and discretion who resides at 17557 West Villa Chula Lane, Surprise,
20 AZ 85387” on August 13, 2024, and also mailed a copy to that address. *Id.* at 4. Specifically, the
21 process server “delivered the documents to an individual who refused to give their name who
22 identified themself[f] as the co-resident.” *Id.* The process server represents that Jane Doe “stated
23 she was planning to move out soon but confirmed living with [Williams]” and “indicated she
24 would accept documents and give them to [him].” *Id.*

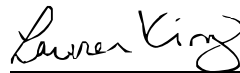
1 This, however, does not sufficiently demonstrate why Nintendo believes that 17557 West
2 Villa Chula Lane is Williams’ “dwelling or usual place of abode.” “Whether a place is a person’s
3 dwelling or usual place of abode for purposes of Rule 4(e)(2)(B) is a highly fact-specific inquiry.”
4 *S.S. v. Ali*, No. 3:23-cv-05074-JSC, 2024 WL 150728, at *4 (N.D. Cal. Jan. 11, 2024) (citation
5 omitted). “Although a person can have more than one dwelling house or usual place of abode for
6 purposes of Rule 4, a dwelling or usual place of abode must be a place where that person lives or
7 resides.” *Bank of N.Y. Mellon as Tr. for Reg. Holders of CWABS, Inc., Asset-Backed Certs., Series*
8 *2005-13 v. Loyo-Morales*, No. 21-16041, 2022 WL 1616980, at *2 (9th Cir. May 23, 2022)
9 (cleaned up); *see also Stars’ Desert Inn Hotel & Country Club, Inc. v. Hwang*, 105 F.3d 521, 524
10 (9th Cir. 1997). Nintendo does not reference the 17557 West Villa Chula Lane address in its
11 complaint and does not otherwise provide facts in supporting declarations showing why it believes
12 this address is where Williams lives or resides. *See generally* Dkt. Nos. 1, 13. The process server’s
13 statements regarding Jane Doe’s confirmations are not enough on their own to confirm Williams’
14 residency. *Compare* Dkt. No. 13 at 1–2, 4, *with Green Trading Co.*, 2021 WL 3135944, at *4
15 (finding plaintiff satisfied Rule 4(e)(2)(B) when counsel “stated on the record that she discovered
16 the defendant’s address using a Lexis Nex[i]s public records search, and she verified it by finding
17 local news reports mentioning the defendant’s business dealings in the Los Ang[e]les, California
18 area”).

19 “Proper service of process is particularly important in the default judgment context”
20 because “[a] default judgment entered when there has been no proper service of the complaint is,
21 *a fortiori*, void, and should be set aside.” *In re Iskric*, 496 B.R. 355, 359 (Bankr. M.D. Pa. 2013)
22 (quoting *Gold Kist, Inc. v. Laurinburg Oil Co., Inc.*, 756 F.2d 14, 19 (3d Cir. 1985)). And
23 “[b]ecause default judgments generally are disfavored, courts have required strict compliance with
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1 the legal prerequisites establishing the court’s power to render the judgment.” *Johnson v. Salas*,
2 No. 2:11-CV-02153 MCE KJN, 2012 WL 1158856, at *4 (E.D. Cal. Apr. 6, 2012) (cleaned up).

3 Accordingly, Nintendo is ORDERED to submit supplemental briefing within 14 days of
4 this Order addressing the basis for Nintendo’s belief that 17557 West Villa Chula Lane is
5 Williams’ dwelling or usual place of abode.

6 Dated this 24th day of October, 2024.

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9 Lauren King
10 United States District Judge
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