

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES -- GENERAL

Case No. **CV 12-7415-JFW (RZx)**

Date: July 8, 2013

Title: Secured Document Services -v- Brian Pascal, et al.

PRESENT:

HONORABLE JOHN F. WALTER, UNITED STATES DISTRICT JUDGE

**Shannon Reilly
Courtroom Deputy**

**None Present
Court Reporter**

ATTORNEYS PRESENT FOR PLAINTIFFS:

None

ATTORNEYS PRESENT FOR DEFENDANTS:

None

PROCEEDINGS (IN CHAMBERS):

ORDER DENYING PLAINTIFF'S MOTION TO SET ASIDE ENTRY OF DEFAULT PURSUANT TO FED. R. CIV. P. 55(c) AND MOTION TO SET ASIDE DEFAULT JUDGMENT PURSUANT TO FED. R. CIV. P. 60(b) [filed 6/3/13; Docket No. 48]

On June 3, 2013, Defendant Brian Pascal ("Pascal") filed a Motion to Set Aside Entry of Default Pursuant to Fed. R. Civ. P. 55(c) and Motion to Set Aside Default Judgment Pursuant to Fed. R. Civ. P. 60(b) ("Motion").¹ On June 11, 2013, Plaintiff Secured Document Services ("Plaintiff") filed its Opposition. Pascal did not file a Reply. Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court finds that this matter is appropriate for decision without oral argument. The hearing calendared for July 15, 2013 is hereby vacated and the matter taken off calendar. After considering the moving and opposing papers, and the arguments therein, the Court rules as follows:

I. Factual and Procedural Background

On August 29, 2012, Plaintiff filed its Complaint against Pascal, BWPRS Inc., doing business as Secured Document Retrieval Services and Secured Document, alleging claims for relief for: (1) copyright infringement; (2) unjust enrichment; (3) trademark infringement under state law; (4) false advertising under state law; (5) unfair competition under state unfair competition law;

¹ Pascal also brought this Motion on behalf of Defendant BWPRS Inc. However, a corporation must be represented by counsel and cannot appear *pro se* or be represented by a shareholder. See *In re Highley*, 459 F.2d 554, 555 (9th Cir. 1972); see also Local Rule 83-2.9.2.4. Therefore, the Court will only consider that portion of the Motion relating to the entry of default and default judgment against Pascal.

and (6) unfair competition under common law.

On January 7, 2013, the Court issued its Scheduling and Case Management Order (“CMO”), which, among other things, ordered the parties to participate in a private mediation by April 2, 2013. On April 4, 2013, Plaintiff filed its Report Re Settlement/Mediation, which detailed Pascal’s failure to cooperate in scheduling the mediation, including the fact that the defendants’ counsel advised Plaintiff’s counsel that Pascal was “uninterested” in participating in mediation.²

On April 5, 2013, the Court issued an Order to Show cause Re Sanctions for Defendants’ Failure to Cooperate in Scheduling Mediation (“Order to Show Cause”), which ordered the Defendants “to show cause in writing by April 12, 2013 why the Court should not impose sanctions against Defendants, including striking their answer and entering default against them for their failure to cooperate in scheduling the mediation before the Court-ordered deadline of April 2, 2013.” Pascal failed to respond to the Court’s Order to Show Cause. As a result, on April 25, 2013, the Court issued an order striking the defendants’ answer and entering the defendants’ default for their failure to respond to the Order to Show Cause. In that Order, the Court specifically found that “Pascal has deliberately decided not to participate in this action” and that the defendants’ failure to respond to the Court’s Order to Show Cause and participate in the scheduling of the mediation “was willful and in bad faith.” On May 23, 2013, the Court granted Plaintiff’s motion for default judgment, and entered judgment against all the defendants, including Pascal.

II. Legal Standard

Motions to vacate an entry of default are governed by Rule 55(c), and motions to vacate a default judgment are governed by Rule 60(b). *TCI Group Life Ins. Plan v. Knoebber*, 244 F.3d 691, 695 (9th Cir. 2001); see, also, Fed. R. Civ. P. 55(c) and 60(b). The same three “good cause” factors the Court considers in determining a motion to vacate an entry of default under Rule 55(c) are applicable in determining whether or not a party has met its burden under Rule 60(b) with respect to vacating a default judgment. *TCI Group Life Ins. Plan*, 244 F.3d at 696 (holding that “the party seeking to vacate a default judgment bears the burden of demonstrating that these factors favor vacating the judgment.”). Specifically, the court may deny a motion to vacate a default judgment if: (1) defendant was willful or culpable in the default; (2) the plaintiff would be prejudiced if the judgment was set aside; or (3) the defendant has no meritorious defense. *Id.* Moreover, “this tripartite test is disjunctive,” which means the motion can be denied if the Court determines any of the three factors is present. *American Association of Naturopathic Physicians v. Hayhurst*, 227 F.3d 1104, 1108 (9th Cir. 2000) (affirming district court denial of motion to set aside default judgment where defendant did not demonstrate a meritorious defense and defendant’s culpable conduct led to the default).

III. Discussion

In this case, Pascal has failed to demonstrate that the entry of default and the default

² On March 29, 2013, the Court granted Defendants’ counsel’s motion to withdraw as counsel of record based on the breakdown of the attorney-client relationship.

judgment (collectively referred to as “Default Judgment”) entered against him should be vacated. With respect to the culpable conduct factor, Pascal argues that the Default Judgment was due to a “miscommunication” with his prior attorney regarding which day he was suppose to appear in Court. However, Pascal’s argument completely ignores the fact that the Default Judgment resulted from his repeated and willful refusal to comply with this Court’s orders. As detailed above, Pascal willfully violated the Court’s order by refusing to cooperate in scheduling the Court-ordered mediation. Moreover, when the Court’s issued an Order to Show Cause affording Pascal an opportunity to explain why he had failed to cooperate in scheduling the Court-ordered mediation, Pascal simply ignored the Order to Show Cause and failed to respond. As a result, the entry of the Default Judgment resulted solely from his repeated refusals to comply with the Court’s orders and not any alleged miscommunication with his attorney. See, e.g., *U.S. v. Scharringhausen*, 224 Fed. Appx. 661, 612 (9th Cir. 2007) (holding that denial of Rule 60 motion was not abuse of discretion where the defendant had ignored, among other things, court orders and then sought to have the default judgment against him set aside due to “incorrect legal advice”).

In addition, Pascal has failed to present specific facts demonstrating that he has a meritorious defense to Plaintiff’s claims. *Foy v. Dicks*, 146 F.R.D. 113, 116 (E.D. Pa. 1993) (holding that “simple denials and conclusory statements” are insufficient to demonstrate a meritorious defense). Instead, Pascal merely offers his unsupported opinion that he has a meritorious defense and attaches various documents to his declaration without any explanation as to how those documents might support his defense. Accordingly, Pascal’s failure to carry his burden of demonstrating that he has a meritorious defense independently supports the denial of his Motion. *Jones v. Phipps*, 39 F.3d 158, 165-66 (7th Cir. 1994) (finding the defendant’s defense “meritless” where it was “to a large extent lacking any factual basis”).

Finally, if the Default Judgment against Pascal was set aside, Plaintiff would suffer substantial prejudice because it would be required “to devote time and money to additional litigation.” *Chrysler Credit Corp. v. Macino*, 710 F.2d 363, 367 (7th Cir. 1983). Plaintiff’s prejudice would be compounded by the fact that granting Pascal’s Motion would simply reward Pascal for his bad faith and dilatory conduct and allow Pascal to continue to illegally profit from his infringing activities while Plaintiff incurred additional unnecessary expenses in prosecuting this action. Therefore, after carefully considering all three “good cause” factors the Court concludes that each of those factors warrant the denial of Pascal’s Motion.

IV. Conclusion

For all the foregoing reasons, Pascal’s Motion is **DENIED**.

IT IS SO ORDERED.