

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

XL Specialty Insurance Company v. Godfather Express, Inc.

XL Specialty · No. 1:24-cv-01451-KES-BAM · Decided November 20, 2025

SUMMARY

The document contains Findings and Recommendations in an insurance subrogation action arising from the alleged theft of cargo by Godfather Express, Inc. The court recommends granting XL Specialty Insurance Company’s motion for default judgment after finding proper service, sufficient claims, and no excusable neglect. It recommends an award of \$833,204.07 in damages and closure of the action.

OPINION

XL Specialty Insurance Company v. Godfather Express, Inc.

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 XL SPECIALTY INSURANCE Case No. 1:24-cv-01451-KES-BAM

COMPANY,

12 FINDINGS AND RECOMMENDATIONS

Plaintiff, REGARDING PLAINTIFF’S MOTION

13 FOR DEFAULT JUDGMENT

v. 14 (Doc. 20)

GODFATHER EXPRESS, INC.,

15 FOURTEEN DAY DEADLINE

Defendant. 16 17 18 Currently pending before the Court is Plaintiff XL Specialty Insurance Company’s 19 (“Plaintiff”) Motion for Default Judgment against Defendant Godfather Express, Inc. 20 (“Defendant”).1 (Doc. 25.) The motion was referred to the undersigned pursuant to 28 U.S.C. § 21 636(b)(1)(B) and Local Rule 302. Defendant did not file an opposition to the motion, and the 22 time in which to do so has passed. L.R. 230(c) (“Opposition . . . to the granting of the motion 23 shall be in writing and shall be filed and served no later than fourteen (14) days after the motion 24 was filed.”) 25 1 Plaintiff initially named Dhawan Transport as a co-defendant in this action. (Doc. 1.) Dhawan 26 Transport could not be located and service could not be effectuated. (See Doc. 9.) On August 27, 27 2025, Plaintiff filed a notice of voluntary dismissal without prejudice for Dhawan Transport pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)

(i), and Dhawan Transport was dismissed 28 from the action. (Doc. 19.) 1 The Court finds this matter suitable for decision without oral argument. L.R. 230(g). 2 (Doc. 24.) Having considered the moving papers and the record in this action, and for the reasons 3 that follow, the Court RECOMMENDS that Plaintiff's Motion for Default Judgment be 4 GRANTED.

5 I. FACTUAL BACKGROUND

6 Plaintiff XL Specialty Insurance Company is a Delaware corporation, insurer, and 7 consignee of several shipments of electronic and household goods (the "Cargo") that Plaintiff 8 alleges were lost or stolen by Defendant. (Doc. 1 ¶ 8.) 9 On November 26, 2024, Plaintiff initiated this insurance subrogation action against 10 Defendant stemming from losses incurred from five shipments of goods in October and

11 November 2022. (Doc. 1.) Plaintiff's insured is XPO Logistics ("XPO"). (Doc. 1 ¶ 8.) XPO 12 maintains a Brokerage Service Agreement with Best Buy Warehousing Logistics ("Best Buy") 13 pursuant to which XPO brokers Best Buy shipments to authorized carriers and manages those 14 shipments. (Id. ¶ 8; Declaration of John Eric Olson in support of Plaintiff's Motion for Default 15 Judgment ¶ 10 (Doc. 26) ("Olsen Decl.")). Pursuant to a Broker/Carrier Service Agreement with 16 Defendant, XPO booked six loads of Cargo for Defendant to transport according to the terms and 17 conditions of the Agreement. (Doc. 1 ¶ 8; Olsen Decl. Ex. A.) Plaintiff insured XPO against loss 18 or damage under a policy of insurance, and reimbursed XPO the value of the lost Cargo, plus 19 related costs, to the extent of coverage provided. (Doc. 1 ¶¶ 1, 17.) 20 The shipments at issue in this action originated from various locations within California 21 for ultimate delivery to a Best Buy location in Dinuba, California. (Id. ¶ 8.) Plaintiff alleges that 22 Defendant entered into the Broker/Carrier Services Agreement without the intent to perform. 23 (Id.) Instead, Defendant provided documentation that it was an authorized carrier and posed as a 24 legitimate carrier for the purpose of stealing the Cargo. (Id.) Plaintiff further alleges that 25 Defendant was a part of an organized crime ring that has been engaging in mass thefts of cargos 26 transported by truck in California. (Id.) Plaintiff reports that California law enforcement has 27 identified the crime ring as "The Singh Gang" and determined that XPO was a victim of the crime 28 ring's fraud scheme. (Olsen Decl. ¶ 7.) According to Plaintiff, the crime ring would receive 1 loads of cargo, remove significant amounts of product from each shipment, create fraudulent bills 2 of lading indicating that a smaller quantity was picked up, and deliver what remained of the load 3 to Best Buy at its Dinuba, CA facility. (Id.) The crime ring would then produce another 4 fraudulent bill of lading with the full original quantities with a fraudulent Best Buy stamp that 5 indicated the load had been delivered in full. (Id. ¶ 8.) Because of Defendant's fraud, neither 6 Best Buy nor XPO were aware of the theft and XPO did not become aware of the shortages until 7 Best Buy filed claims against XPO for the missing Cargo. (Id.) None of the Cargo was able to be 8 recovered by law enforcement. (Id. ¶ 9.) 9 The following shipments of Cargo were subject to theft from October through November 10 2022, and Plaintiff provides the resulting damages: (1) Claim 7699, consignment of Shark Ninja 11 carpet cleaners (\$67,388.49), (2) Claim 7885, consignment

of Targus carrying cases 12 (\$86,552.21), (3) Claim 7871, consignment of unidentified electronics (\$76,928.04), (4) Claim 13 7901, consignment of Sound United audio equipment (\$237,826.51), (5) Claim 7524, 14 consignment of unidentified cargo (\$56,071.62), (6) Claim 3652, consignment of LCD monitors 15 (\$176,456.74), and (7) Claim 5728, consignment of Segway kickscooters (\$132,020.46). (Doc. 1 ¶ 9.) In sum, the value of the lost Cargo is \$833,204.07, none of which has been recovered. (Id. ¶ 17 10.) Plaintiff has provided copies of the invoices and bills of lading in support of its allegations. 18 (Olsen Decl. Exs. C, D, E.) In addition, Plaintiff provides a comprehensive report of the losses as 19 prepared by Plaintiff's retained investigations firm. (Olsen Decl. Ex. B.) 20 In January 2023 and May 2023, Best Buy initiated claims for the stolen goods missing 21 from the five reported shipments. (Olsen Decl. ¶ 5.) As insurer of the owner and consignee of 22 the Cargo, Plaintiff paid the claims. (Id.; Doc. 1 ¶ 1.) Plaintiff has demanded that Defendant 23 reimburse the value of the Cargo, plus related costs. (Doc. 1 ¶ 17.) To date, Defendant has not 24 reimbursed Plaintiff for the value of the Cargo or related costs. (Id.)

25 II. PROCEDURAL BACKGROUND

26 On November 26, 2024, Plaintiff initiated this action against Defendant. (Doc. 1.) 27 Plaintiff brings claims for (1) breach of contract, (2) conversion, (3) violation of California Civil 28 Code § 2194, and (4) bailment. In its Prayer for Relief, Plaintiff seeks (1) \$833,204.07 for the 1 value of the lost or stolen Cargo, (2) incidental and consequential damages according to proof, 2 and (3) costs of the suit including interest. (Id. at 6.) 3 On February 21, 2025, Defendant was personally served with a copy of the complaint by 4 substituted service in accordance with California Code of Civil Procedure § 415.20(a). (Doc. 11.) 5 A copy of the summons and complaint was left with the individual in charge at Defendant's 6 corporate office, which is also listed as the location of its agent for service of process. (Doc. 12-1 7 at 1-2.) Service was mailed on February 21, 2025. (Id.) Defendant did not answer the complaint 8 or file a responsive pleading. Plaintiff's counsel has provided that he has not been contacted by 9 an attorney or anyone else on behalf of Defendant. (Id. at 2.) Defendant has not filed an 10 appearance or appeared at any conference before the Court. (See Doc. 8, 13, 17.) 11 On May 6, 2025, Plaintiff filed a Request for Entry of Default against Defendant. (Decl. 12 of Adam C. Brown (Doc. 12) ("Brown Decl.")). The same day, the Clerk of Court entered 13 default against Defendant. (Doc. 15.) On August 27, Plaintiff filed a Motion for Default 14 Judgment and accompanying Declaration against Defendant on the grounds that Defendant has 15 failed to answer or otherwise respond to the complaint within the time prescribed by the Federal 16 Rules of Civil Procedure. (Docs. 20, 21.) On October 14, 2025, Plaintiff filed a memorandum of 17 law and accompanying Declaration in support of its Motion for Default Judgment. (Docs. 26, 18 27.) Defendant has not filed any responsive brief to Plaintiff's Motion for Default Judgment, and 19 the time to do so has since passed.

20 III. LEGAL STANDARD

21 Federal Rule of Civil Procedure 55(b)(1) outlines the circumstances under which the clerk 22 of the court may enter default judgment. "If the plaintiff's claim is for a sum certain or a sum that

23 can be made certain by computation, the clerk—on the plaintiff's request, with an affidavit 24 showing the amount due—must enter judgment for that amount and costs against a defendant 25 who has been defaulted for not appearing and who is neither a minor nor an incompetent person.” 26 Fed. R. Civ. P. 55(b)(1). Rule 55(b)(2) states that in “all other cases, the party must apply to the 27 court for a default judgment.” Fed. R. Civ. P. 55(b)(2). “The court may conduct hearings or 28 make referrals—preserving any federal statutory right to a jury trial—when, to enter or effectuate 1 judgment, it needs to: (A) conduct an accounting; (B) determine the amount of damages; (C) 2 establish the truth of any allegation by evidence; or (D) investigate any other matter.” Id. “Upon 3 default, the well-pleaded allegations of a complaint relating to liability are taken as true.” *Dundee 4 Cement Co. v. Howard Pipe & Concrete Prods., Inc.*, 722 F.2d 1319, 1323 (7th Cir. 1983); 5 *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987). 6 Factors which may be considered by courts in exercising discretion as to the entry of a 7 default judgment include: (1) the possibility of prejudice to the plaintiff; (2) the merits of 8 plaintiff's substantive claim; (3) the sufficiency of the complaint; (4) the sum of money at stake in 9 the action; (5) the possibility of a dispute concerning material facts; (6) whether the default was 10 due to excusable neglect; and (7) the strong policy underlying the Federal Rules of Civil 11 Procedure favoring decisions on the merits. *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 12 1986); *PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1174 (C.D. Cal. 2002).

13 IV. DISCUSSION

14 The Court shall address each of the Eitel factors in turn. For the reasons provided below, 15 the Court finds that these factors weigh in favor of the entry of default judgment against 16 Defendant. 17 A. Service of Process 18 In deciding whether to grant or deny a default judgment, a court should assess the 19 adequacy of the service of process on the party against whom default is requested. See, e.g., 20 *Trujillo v. Harsarb, Inc.*, No. 1:21-cv-00342-NONE-SAB, 2021 WL 3783388 at *4 (E.D. Cal.

21 Aug. 26, 2021) (“As a general rule, the Court considers the adequacy of service of process before

22 evaluating the merits of a motion for default judgment.”); *Coach, Inc. v. Diva Shoes & 23 Accessories*, No. 10-5151 SC, 2011 WL 1483436 at *2 (N.D. Cal. Apr. 19, 2011); *Katzakian v. 24 Check Resolution Service, Inc.*, No. 1:10-cv-00716-AWI-GSA, 2010 WL 5200912 at *2 (E.D. 25 Cal. Dec. 15, 2010).

26 Rule 4 sets forth the requirements for serving a corporation, partnership, or association 27 within a judicial district of the United States. Pursuant to Rule 4(h), a domestic corporation, or a 28 partnership or other unincorporated association that is subject to suit under a common name, may 1 be served by following state law for service of a summons on an individual or by delivering a 2 copy of the summons and complaint to an officer or agent and by a mailing a copy of each to the 3 defendant. Fed. R. Civ. P. 4(h)(1). 4 In California, a corporation may be served by delivery to the person designated as an 5 agent for service of process, or to the “president, chief executive

officer, or other head of the 6 corporation, a vice president, a secretary or assistant secretary, a treasurer or assistant treasurer, a 7 controller or chief financial officer, a general manager, or a person authorized by the corporation 8 to receive service of process.” Cal. Civ. Proc. Code § 416.10. A corporation may also be served 9 via substituted service by “leaving a copy of the summons and complaint during usual office 10 hours in [the office of the person to be served] . . . with the person who is apparently in charge 11 thereof, and by thereafter mailing a copy of the summons and complaint by first-class mail, 12 postage prepaid to the person to be served at the place where a copy of the summons and 13 complaint were left.” Cal. Civ. Proc. Code § 415.20(a). Under this provision, “[s]ervice of a 14 summons in this manner is deemed complete on the 10th day after the mailing.” Id. 15 According to California’s Office of the Secretary of State, Defendant listed Sucha Singh, 16 4460 W. Shaw Ave # 192, Fresno, CA 93722, as Defendant’s Chief Executive Officer, Secretary, 17 and Chief Financial Officer. (Doc. 12-1 at 7-8). On February 21, 2025, Plaintiff served 18 Defendant with the summons and complaint in this action by substituted service in accordance 19 with California Code of Civil Procedure § 415.20(a). (Doc. 11; Brown Decl. ¶ 4.) A copy of the 20 summons and complaint was left at Sucha Singh’s address, which is also listed as Defendant’s 21 corporate office and the location of its agent for service of process. (Doc. 11 at 1; Brown Decl. ¶ 22 4.) A copy of the summons and complaint was mailed to Sucha Singh’s address the same day. 23 (Doc. 11 at 2.) The time for Defendant to file an answer or other responsive pleading expired on 24 March 24, 2025. Fed. R. Civ. P. 12(a)(1)(A)(i).

25 On September 16, 2025, copies of the Notice of Motion and Motion for Entry of Default 26 Judgment against Defendant were served at the address provided for Defendant’s Chief Executive 27 Officer, Secretary, and Chief Financial Officer via mail. (Doc. 27.) 28 The Court finds that Plaintiff properly served Defendant pursuant to Rule 4(h). 1 B. The Eitel Factors Weigh in Favor of Default Judgment 2 1. Possibility of Prejudice to Plaintiff 3 The first factor considers whether a plaintiff would suffer prejudice if default judgment 4 were not entered. See PepsiCo, Inc., 238 F.Supp.2d at 1177. Generally, where default has been 5 entered against a defendant, a plaintiff has no other means by which to recover against that 6 defendant. Id.; Moroccan Oil, Inc. v. Allstate Beauty Prods., 847 F.Supp.2d 1197, 1200-01 (C.D.

7 Cal. 2012). Here, Plaintiff seeks relief against a party that it alleges has orchestrated a complex 8 fraud scheme throughout California and has caused Plaintiff \$833,204.07 in damages. (Doc. 1 ¶¶ 9 8, 10.) Plaintiff further states that it has already demanded that Defendant reimburse the value of 10 the Cargo and related costs, but that Defendant has refused to reimburse Plaintiff. (Id. ¶ 17.) 11 Defendant has not attended any mandated conferences or otherwise participated in this action. 12 (See Docs. 8, 13, 17.) Here, the Court finds Plaintiff would be prejudiced if default judgment 13 were not granted. 14 This factor weighs in favor of default judgment. 15 2. Merits of Plaintiff’s Claims and Sufficiency of the FAC 16 The second and third Eitel factors, taken together, “require that a plaintiff state a claim on 17 which [they] may recover.” PepsiCo, Inc., 238 F. Supp. 2d at

1175. Notably a “defendant is not 18 held to admit facts that are not well-pleaded or to admit conclusions of law.” *DIRECTV, Inc. v. 19 Hoa Huynh*, 503 F.3d 847, 854 (9th Cir. 2007) (internal citation omitted). 20 Plaintiff’s allegations are taken as true due to Defendant’s default, and the Court finds that 21 each of the claims brought in this action are claims upon which Plaintiff may recover. 22 a) Breach of Contract 23 “Under California law, the elements of a breach of contract claim are: ‘(1) the existence of 24 the contract, (2) plaintiff’s performance or excuse for nonperformance, (3) defendant’s breach 25 and (4) the resulting damages to the plaintiff.’” *Fudy Printing Co.*, 2019 WL 2180221, at *3 26 (citing *Oasis West Realty, LLC v. Goldman*, 51 Cal. 4th 811, 821 (2011)). 27 Here, accepting the complaint’s factual allegations as true, Plaintiff’s insured entered into 28 a valid and enforceable Broker/Carrier Agreement with Defendant wherein Defendant agreed to 1 provide transportation according to the relevant agreement’s terms and conditions, safely and 2 promptly carry the Cargo, and deliver it to the intended destination. (Olsen Decl. Ex. A.; Doc. 1 ¶ 3 14.) Plaintiff’s insured performed all conditions, covenants, and promises under the Agreement, 4 including payment in full to Defendant for services rendered. (Doc. 1 ¶ 15.) Defendant did not 5 uphold its end of the bargain by failing to safely carry and deliver the Cargo to its intended 6 destination. (Id. ¶¶ 8, 16.) As a direct and proximate result of Defendant’s breach of contract, 7 Plaintiff provides that it has suffered damages in the amount of \$833,204.07. (Id. ¶¶ 9, 18.) As 8 the party that pays the insured’s loss, Plaintiff “stands in the shoes” of the insured and succeeds in 9 the insured’s rights and remedies. *Chubb Custom Ins. Co. v. Space Sys./Loral, Inc.*, 710 F.3d 10 946, 957 (9th Cir. 2013). 11 These allegations are legally sufficient to entitle Plaintiff to judgment against Defendant 12 on the breach of contract claim. See *Fudy Printing Co.*, 2019 WL 2180221, at *3; *Paramount 13 Citrus Co-op., Inc. v. H & M Produce Inc.*, No. 1:08-cv-01210-AWI-SMS, 2008 WL 4716764, at 14 *5 (E.D. Cal. Oct. 24, 2008), report and recommendation adopted, No. 1:08-CV-01210-AWI- 15 SMS, 2008 WL 5389711 (E.D. Cal. Dec. 24, 2008) (citing Cal. Civ. Code §§ 1550 et seq.) 16 (“Plaintiff has alleged the contract, its performance of the contract, [Defendant’s] breach of the 17 contract, and damages. This is legally sufficient to entitle the Plaintiff to judgment against 18 [Defendant] on the claim for breach of contract.”) 19 b) Conversion 20 Under California law, the elements of conversion are: (1) the plaintiff’s ownership or right 21 to possession of the property, (2) the defendant’s conversion by wrongful act or disposition of 22 property rights, and (3) damages. *Freedom Mortg. Corp. v. Madariaga*, No. 2:19-CV-2432-DC- 23 SCR, 2025 WL 750600, at *5 (E.D. Cal. Mar. 10, 2025). As an insurer, Plaintiff has the “right to 24 be put in the position of the insured in order to pursue recovery from third parties legally 25 responsible to the insured for a loss which the insurer has both insured and paid.” *Interstate Fire 26 & Cas. Ins. Co. v. Cleveland Wrecking Co.*, 182 Cal. App. 4th 23, 32 (2010). Accepting the 27 complaint as true, Plaintiff’s insured was the rightful owner of the Cargo, Defendant intentionally 28 converted the Cargo to their own use by stealing Cargo from each transported load in violation of 1 Plaintiff’s rights as the lawful owner and caused Plaintiff to sustain \$833,204.07 in damages. 2 (Doc. 1 ¶¶ 20-23.) 3 These allegations are

legally sufficient to entitle Plaintiff to judgment against Defendant 4 on the conversion claim. See Joe Hand Promotions, Inc. v. Singh, No. 1:13-CV-01484-LJO-SK, 5 2014 WL 1275712 (E.D. Cal. Mar. 27, 2014), at *3 (finding Plaintiff entitled to default judgment 6 on conversion claim). 7 c) Bailment 8 “California law generally defines a bailment as the delivery of a thing in trust for a 9 purpose upon an implied or express contract.” Whitcombe v. Stevedoring Servs. of Am., 2 F.3d 10 312, 316 (9th Cir. 1993), as amended (Aug. 16, 1993) (citing Greenberg Brothers, Inc. v. Ernest 11 W. Hahn, Inc., 246 Cal.App.2d 529, 54 Cal.Rptr. 770, 772 (1966)). Plaintiff states that the Cargo 12 was delivered to Defendant in good condition for transport to the intended Best Buy location. 13 (Doc. 1 ¶ 29.) Defendant agreed to transport the Cargo and ensure that it reached its destination 14 in the same good order and condition as it was received. (Id.) Defendant then failed to prevent 15 damage or loss of the Cargo, breached its duties as a provider of transportation services and bailee 16 of the Cargo, and failed to act with the adequate standard of care. (Id. ¶ 30.) As a result, Plaintiff 17 sustained \$833,204.07 in damages due to the lost or stolen Cargo. (Id. ¶ 31.) 18 These allegations are legally sufficient to entitle Plaintiff to judgment against Defendant 19 on the bailment claim. See US Airline Servs., LLC v. Elec. Com., LLC, No. 8:21-CV-01436-JLS- 20 KES, 2022 WL 19914519, at *4 (C.D. Cal. Aug. 22, 2022) (finding plaintiff to adequately state a 21 bailment claim where defendant fraudulently held funds past the agreed-upon time limit and 22 refused to return the funds); Whitcombe, 2 F.3d at 316 (upholding lower court’s determination 23 that a bailment relationship existed when a cargo owner delivered automobiles to a terminal 24 operator that ultimately damaged the automobiles). 25 d) California Civil Code Section 2194 26 California Civil Code Section 2194 provides that “[u]nless the consignor accompanies the 27 freight and retains exclusive control thereof, an inland common carrier of property is liable, from 28 the time that he accepts until he relieves himself from liability pursuant to Sections 2118 to 2122, 1 for the loss or injury thereof from any cause whatever . . .” Cal. Civ. Code § 2194. As relevant 2 here, the carrier was required to (1) deliver the cargo to the consignee, at the place to which it is 3 addressed, in the manner usual at that place, and (2) either deliver it to the consignee or his agent 4 personally, or give notice of its arrival and keep it safely until the consignee has had reasonable 5 time to remove it. Cal. Civ. Code §§ 2118, 2120. 6 According to Plaintiff, the Cargo was delivered to Defendant, who received, accepted, and 7 agreed to transport the Cargo for consideration. (Doc. 1 ¶ 25.) Plaintiff states that Defendant 8 failed to prevent damage to or loss of the Cargo, breached and violated its duties as providers of 9 transportation services, and failed to act within the standard of care required of a carrier, bailee, or 10 broker of goods for hire. (Id. ¶¶ 8, 26.) As a result, Plaintiff sustained \$833,204.07 in damages. 11 (Id. ¶¶ 10, 27.) 12 These allegations are legally sufficient to entitle Plaintiff to judgment against Defendant 13 concerning Defendant’s liability under California Civil Code § 2194. 14 3. The Sum of Money at Stake in the Action 15 Under the fourth factor cited in Eitel, “the court must consider the amount of money at 16 stake in relation to the seriousness of Defendant’s conduct.” PepsiCo, Inc., 238 F Supp.2d at 17 1176; see also Philip Morris USA, Inc. v. Castworld Prods., Inc., 219 F.R.D. 494, 500 (C.D. Cal.

18 2003). “When the money at stake is substantial, default judgment is discouraged.” Bd. of Trs. v. 19 Core Concrete Constr., Inc., No. 11-02532 LB, 2012 WL 380304, at *4 (N.D. Cal. Jan. 17, 2012) 20 (internal citation omitted). However, when “the sum of money at stake is tailored to the specific 21 misconduct of the defendant, default judgment may be appropriate.” Id. (internal citation 22 omitted). “In determining whether the amount at stake is reasonable, courts consider a plaintiff’s 23 declarations, calculations, and other documentation of damages.” Fudy Printing Co., 2019 WL 24 2180221, at *4. 25 Plaintiff asserts \$833,204.07 in damages, which represents the sum of the total value of 26 the lost or stolen Cargo. (Doc. 1 at 6.) Plaintiff’s request is reasonable, supported by undisputed 27 allegations in the complaint, declarations, and submitted documentation. Additionally, the sum 28 “flows directly from [Defendant’s] breach of contract.” Fudy Printing Co., 2019 WL 2180221, at 1 *5. 2 This factor weighs in favor of default judgment.

3 4. The Possibility of a Dispute Concerning Material Facts 4 Following the Clerk’s entry of default, the Court may assume the truth of well-pled facts 5 in the complaint and, thus, there is no likelihood that any genuine issue of material fact exists. 6 Dundee Cement Co., 722 F.2d at 1323; TeleVideo Sys., Inc., 826 F.2d at 917-18. Further, 7 Defendant’s failure to file an answer in this case or a response to the instant motion supports the 8 conclusion that the possibility of a dispute as to material facts is minimal. See, e.g., Elektra 9 Entm’t Grp. Inc. v. Crawford, 226 F.R.D. 388, 393 (C.D. Cal. 2005) (“Because all allegations in a 10 well-pleaded complaint are taken as true after the court clerk enters default judgment, there is no 11 likelihood that any genuine issue of material fact exists.”) Furthermore, Plaintiff properly served 12 Defendant’s registered agent for service of process with the complaint and Motion for Default 13 Judgment (Docs. 11, 27), but Defendant failed to appear and respond to the complaint or to this 14 motion. See Fudy Printing Co., 2019 WL 2180221, at *5 (“The record reflects [Defendant’s] 15 silence despite opportunities to respond, so there is little possibility of a dispute of material 16 facts.”) 17 This factor weighs in favor of default judgment. 18

5. Whether the Default Was Due to Excusable Neglect 19 The sixth Eitel factor considers the possibility that Defendant’s default resulted from 20 excusable neglect. PepsiCo, Inc., 238 F.Supp.2d at 1177. Courts have found that where a 21 defendant was “properly served with the complaint, the notice of entry of default, as well as the 22 paper in support of the [default judgment] motion,” there is no evidence of excusable neglect. 23 Shanghai Automation Instrument Co. v. Kuei, 194 F.Supp.2d 995, 1005 (N.D. Cal. 2001). 24 Upon review of the record, the Court finds that the default was not the result of excusable 25 neglect. As discussed above, Defendant was properly served with the summons, complaint, and 26 the Motion for Default Judgment. (Docs. 11, 27.) Despite service, Defendant has not appeared. 27 Thus, the record suggests that Defendant has chosen not to participate in this action, and not that 28 the default resulted from any excusable neglect. 1 This factor weighs in favor of the entry of a default judgment. 2

6. The Strong Policy Favoring Decisions on the Merits 3 “Cases should be decided upon their merits whenever reasonably possible.” Eitel, 782 4 F.2d at 1472. However, district courts have concluded with regularity that this policy, standing 5 alone, is not dispositive,

especially where a defendant fails to appear or defend itself in an action. 6 *PepsiCo, Inc.*, 238 F.Supp.2d at 1177; see also *Craigslist, Inc. v. Naturemarket, Inc.*, 694 F.Supp.2d 1039, 1061 (N.D. Cal. Mar. 5, 2010). Although the Court is cognizant of the policy 8 favoring decisions on the merits, that policy is unavailable here because Defendant has not 9 responded or otherwise participated in this action in any way. 10 This factor does not weigh against entry of default judgment.

11 V. DAMAGES

12 Plaintiff states in its brief that it seeks to recover the invoice value of the lost or stolen 13 Cargo, plus court costs, and that no other damages are being sought. (Doc. 25 at 6.) The Court 14 finds that Plaintiff is entitled to judgment for the amount of \$833,204.07. 15 A. Principal Damages 16 Plaintiff states that the invoice value of the lost Cargo is \$833,204.07, for which Plaintiff 17 has reimbursed its insured under the relevant insurance policy, and none of which has been 18 recovered. (Doc. 1 ¶¶ 1, 10.) Plaintiff has established that it is entitled to default judgment under 19 Rule 55(b). Thus, Plaintiff is entitled to judgment for the amount of \$833,204.07.

20 B. Other Damages 21 In its complaint, Plaintiff seeks (1) \$833,204.07 for the value of the lost or stolen Cargo, 22 (2) incidental and consequential damages according to proof, and (3) the costs of suit, including 23 interest. (Doc. 1 at 6.) In the pending motion, Plaintiff now “seeks to recover the invoice value 24 of the stolen Cargo, plus court costs. No other damages are being sought.” (Doc. 25 at 6.) 25 Plaintiff does not provide additional information, in either its brief or declarations, to permit the 26 Court to determine the amount of incidental or consequential damages, costs of the suit that have 27 been incurred by Plaintiff, or interest. 28 //

1 VI. CONCLUSION AND RECOMMENDATION

2 Based on the foregoing, the Court HEREBY RECOMMENDS that Plaintiff’s Motion for 3 Default Judgment (Doc. 25) be GRANTED. Accordingly, the Court RECOMMENDS that: 4 1. Default judgment shall be entered in favor of Plaintiff XL Specialty Insurance 5 Company and against Defendant Godfather Express, Inc.; 6 2. Plaintiff shall be awarded damages in the amount of \$833,204.07; and 7 3. This action shall be closed. 8 Plaintiff is HEREBY ORDERED to mail a copy of these findings and recommendations 9 to Defendant at the address of Defendant’s registered agent for service of process. 10 These Findings and Recommendations will be submitted to the United States District 11 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within 12 fourteen (14) days after being served with these Findings and Recommendations, the parties may 13 file written objections with the court. The document should be captioned “Objections to 14 Magistrate Judge’s Findings and Recommendations.” Objections, if any, shall not exceed 15 fifteen (15) pages or include exhibits. Exhibits may be referenced by document and page 16 number if already in the record before the Court. Any pages filed in excess of the 15-page 17 limit may not be considered. The parties are advised that failure to file objections within the 18 specified time may result in the waiver of the “right to challenge the magistrate’s factual 19 findings” on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838–39 (9th

Cir. 2014) (citing *Baxter 20 v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)). 21 IT IS SO
ORDERED. 22 23 Dated: November 20, 2025 /s/ Barbara A. McAuliffe _
UNITED STATES MAGISTRATE JUDGE
24 25 26 27 28

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