

**UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA**

Fox Factory, Inc. v. South County Buick GMC, et al.

Fox Factory, Inc. v. South County Buick GMC, No. 3:24-cv-01883-JES-KSC (S.D. Cal. Feb. 25, 2025) · No.
3:24-cv-01883-JES-KSC · Decided February 25, 2025

SUMMARY

The United States District Court for the Southern District of California discharged its order to show cause after Plaintiff voluntarily dismissed South County Buick GMC for failure to serve it. The Court denied without prejudice Plaintiff’s motion for clerk’s entry of default judgment against Honor Buick GMC because, although damages and costs were stated as sums certain, the requested prejudgment interest was not adequately supported by a verifiable calculation.

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 SOUTHERN DISTRICT OF
CALIFORNIA 10 11 FOX FACTORY, INC., Case No.: 3:24-cv-01883-JES-KSC 12 Plaintiff,
ORDER: 13 v. (1) DISCHARGING ORDER TO 14 SOUTH COUNTY BUICK GMC, et al.,
SHOW CAUSE; and 15 Defendants.

(2) DENYING MOTION FOR 16 CLERK’S ENTRY OF DEFAULT 17 JUDGMENT WITHOUT
PREJUDICE 18 19 [ECF No. 6,8] 20 On October 16, 2024, Plaintiff filed a complaint against
Defendants South County 21 Buick GMC and Honor Buick GMC and a summons was issued the
same day. ECF Nos. 22 1, 2.

On October 30, 2024, Plaintiff submitted proof of service on Honor Buick GMC. ECF 23 No. 3.
On November 21, 2024, Clerk’s Entry of Default was entered against Defendant 24 Honor Buick
GMC only. ECF No. 5. 25 On January 31, 2025, the Court issued an Order to Show Cause
(“OSC”) as to why 26 the case against the other Defendant, South County Buick GMC, should not
be dismissed 27 for failure to serve that Defendant with the summons and complaint within 90
days as 28 1 required by Rule 4(m).

ECF No. 6. On February 12, 2025, Plaintiff filed a Notice of 2 Voluntary Dismissal as to
Defendant South County Buick GMC. ECF No. 7. On the same 3 day, Plaintiff filed a Motion for
Clerk’s Entry of Default Judgment against Honor Buick 4 GMC. ECF No. 8.

On February 14, 2025, Plaintiff also filed a response to the Court’s 5 OSC as to South County
Buick GMC. ECF No. 9 6 ORDER TO SHOW CAUSE 7 In its February 14 submission, Plaintiff

responds to the Court's prior OSC that it attempted to serve Defendant South County Buick GMC multiple times and was unable to do so. ECF No. 9 at 2.

Thus, Plaintiff moved to dismiss that defendant without prejudice. See ECF No. 7. Accordingly, the Court now DISCHARGES the OSC against Plaintiff. MOTION FOR DEFAULT JUDGMENT Also pending before the Court is Plaintiff's Motion for Clerk's Entry of Default Judgment. ECF No. 8. Plaintiff makes this motion under Federal Rule of Civil Procedure 55(b)(1), which permits an application for default judgment to be entered by the clerk "if the plaintiff's claim is for a sum certain or for a sum that can be made certain by computation." Fed.

R. Civ. P. 55(b)(1). A sum is not certain "unless no doubt remains as to the amount to which a plaintiff is entitled as a result of the defendant's default." *Franchise Holding II, LLC v. Huntington Rests. Grp., Inc.*, 375 F.3d 922, 929 (9th Cir. 20 2004). Plaintiff requests the following amounts: (1) damages in the amount of \$147,345.00; (2) prejudgment interest in the amount of \$25,874.27, and (3) costs in the amount of \$405.00.

ECF No. 8. To support the damages amount, Plaintiff attaches the invoices for the trucks at issue that it alleges were never paid. ECF No. 8-1. These invoices accurately support the damages request of \$147,345.00 and is a sum certain.

To support the costs, Plaintiff requests the \$405.00 filing fee that it incurred in having to file this lawsuit. This again qualifies as a sum certain. As to the request for interest, interest may be considered a sum certain under Rule 2 | 55(b)(1). See *DSG Logistics, LLC v. Rocha, Inc.*, No. 219CVO00720JLRJRC, 2019 WL 3 || 13199218, at *2 (W.D. Wash. Oct.

9, 2019). Plaintiff makes this request, citing to California Civil Code § 3289, which states that any interest stipulated in a contract "remains chargeable after a breach thereof, as before, until the contract is superseded by a verdict or other new obligation." Cal. Civ. Code § 3289(a). If the contract fails to stipulate an interest rate and was entered into after January 1, 1986, the interest rate will be set to 10%.

Cal. Civ. Code § 3289(b). The Court finds that prejudgment interest is appropriate in this case. See *ESET, LLC v. Bradshaw*, No. 10-CV-1369 JLS JMA, 2011 WL 2680497, || at *3 (S.D. Cal. July 8, 2011) (awarding prejudgment interest in breach of contract case on default judgment); *Phillips 66 Co. v. Grainer*, No. 1:13-CV-1890 LJO-BAM, 2015 WL 12 || 3797396, at *3 (E.D.

Cal. June 18, 2015) (same). However, the Court finds that Plaintiff has failed to provide the Clerk with sufficient information to verify the computation that would make the interest amount sought a "sum certain." Plaintiff requests a total amount \$25,874.27, but fails to submit how this amount was calculated.

For example, at a 16 ||minimum, Plaintiff fails to state the end of the time period for which this calculation was 17 based on, making it impossible for the Court to verify it. 18 Accordingly, the Court DENIES WITHOUT PREJUDICE the request for entry 19 |of default judgment at this time. Plaintiff may refile the request, but must include detailed 20 |information about how the interest sought has been calculated, including the assumptions 21 || based for the calculation and separated for each invoice, such that the Court can verify the 22 || calculation under Rule 55(b)(1).

23 IT IS SO ORDERED. 24 35 Dated: February 25, 2025 “| ie SS smmeo ot 26 Honorable James E. Simmons Jr. 07 United States District Judge 28