

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

OPINION

v. Fox Factory, Inc.

PER CURIAM.

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 8 attempted to
serve Defendant South County Buick GMC multiple times and was unable to 9 do so. ECF No. 9
at 2. Thus, Plaintiff moved to dismiss that defendant without prejudice. 10 See ECF No. 7. 11
Accordingly, the Court now DISCHARGES the OSC against Plaintiff.

12 MOTION FOR DEFAULT JUDGMENT

13 Also pending before the Court is Plaintiff's Motion for Clerk's Entry of Default 14 Judgment. ECF No. 8. Plaintiff makes this motion under Federal Rule of Civil Procedure 15 55(b)(1), which permits an application for default judgment to be entered by the clerk "if 16 the plaintiff's claim is for a sum certain or for a sum that can be made certain by 17 computation." Fed. R. Civ. P. 55(b) (1). A sum is not certain "unless no doubt remains as 18 to the amount to which a plaintiff is entitled as a result of the defendant's default." 19 *Franchise Holding II, LLC v. Huntington Rests. Grp., Inc.*, 375 F.3d 922, 929 (9th Cir. 20 2004). 21 Plaintiff requests the following amounts: (1) damages in the amount of \$147,345.00; 22 (2) prejudgment interest in the amount of \$25,874.27, and (3) costs in the amount of 23 \$405.00. ECF No. 8. To support the damages amount, Plaintiff attaches the invoices for 24 the trucks at issue that it alleges were never paid. ECF No. 8-1. These invoices accurately 25 support the damages request of \$147,345.00 and is a sum certain. To support the costs, 26 Plaintiff requests the \$405.00 filing fee that it incurred in having to file this lawsuit. This 27 again qualifies as a sum certain. 28 1 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 4 || California Civil Code § 3289, which states that any interest stipulated in a contract 5 || "remains chargeable after a breach thereof, as before, until the contract is superseded by a 6 || verdict or other new obligation." Cal. Civ. Code § 3289(a). If the contract fails to stipulate 7 || an interest rate and was entered into after January 1, 1986, the interest rate will be set to 8 10%. Cal. Civ. Code § 3289(b). The Court finds that prejudgment interest is appropriate 9 || in this case. See *ESET, LLC v. Bradshaw*, No. 10-CV-1369 JLS JMA, 2011 WL 2680497, 10 || at *3 (S.D. Cal. July 8, 2011) (awarding prejudgment interest in breach of contract case on 11 || 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 13 || has failed to provide the Clerk with sufficient information to verify the computation that 14 || would make the interest amount sought a "sum certain." Plaintiff requests a total amount 15 \$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 25 "[ie SS smmeo ot 26 Honorable James E. Simmons Jr. 07 United States District Judge 28

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