UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Ewing v. DME Capital, LLC

No. 24-cv-0692-AGS-JLB (S.D. Cal. July 11, 2025) · No. 24-cv-0692-AGS-JLB · Decided July 11, 2025

SUMMARY

The United States District Court for the Southern District of California grants DME Capital, LLC's motion to set aside a default judgment under Federal Rule of Civil Procedure 60(b)(1), finding no prejudice, a potentially meritorious defense, and insufficiently culpable conduct. The court denies DME's motion to dismiss for improper service and denies related requests for Rule 11 sanctions and judicial notice as moot.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Andrew G. Schopler
JURISDICTION	United States District Court for the Southern District of California
DECIDED	July 11, 2025
DOCKET	24-cv-0692-AGS-JLB
DISPOSITION	other
PROCEDURAL POSTURE	After the Clerk entered default and the Court entered default judgment against DME Capital, DME moved under Federal Rule of Civil Procedure 60(b)(1) to set aside the default judgment and moved to dismiss for lack of personal jurisdiction based on allegedly defective service. DME also sought Rule 11 sanctions.
STANDARD OF REVIEW	Relief from default judgment under Rule 60(b)(1) is evaluated under the Ninth Circuit's three-factor excusable-neglect test: prejudice to the plaintiff, existence of a meritorious defense, and culpable conduct causing the default. Service-of-process defects are evaluated under Federal Rule of Civil Procedure 4, construed flexibly so long as the defendant received sufficient notice.
PRECEDENTIAL VALUE	unknown

TOPICS

default judgment · default · service of process · personal jurisdiction · sanctions

PRACTICE AREAS

civil procedure · consumer protection · commercial litigation

QUESTIONS PRESENTED

1. Whether DME established excusable neglect and good cause warranting relief from the default judgment under Federal Rule of Civil Procedure 60(b)(1).
2. Whether the summons and service were defective because Ewing handwritten DME's name and address on the summons and because the listed address was that of DME's registered agent rather than DME itself.
3. Whether DME was entitled to Rule 11 sanctions based on the alleged service defect.

HOLDINGS

1. The default judgment should be set aside because all three relevant factors—lack of prejudice to Ewing, DME's showing of a potentially meritorious defense, and absence of culpable conduct—weighed in favor of relief under Rule 60(b)(1).
2. DME satisfied the meritorious-defense requirement by alleging that the calls were not made by DME or an associated person or entity, or that Ewing consented to the calls.
3. The summons was valid even though Ewing handwritten DME's name and address in blank spaces provided for that purpose.
4. Service was sufficient even though the summons listed the address of DME's registered agent because the registered agent transmitted the summons and complaint to DME, giving DME sufficient notice.

KEY QUOTATIONS

> *““[D]efault judgments are ordinarily disfavored” since “[c]ases should be decided upon their merits whenever reasonably possible.””* (at 1)

> *““The three elements of a TCPA claim are: (1) the defendant called a cellular telephone number; (2) using an automatic telephone dialing system; (3) without the recipient’s prior express consent.””* (at 2)

> *““Rule 4 is a flexible rule that should be liberally construed so long as a party receives sufficient notice of the complaint.””* (at 4)

> *“Put simply, the summons was valid even though Ewing handwrote DME’s information into the blank space that the Clerk of Court left on the form for that purpose.”* (at 4)

FACTUAL BACKGROUND

Ewing alleged that DME repeatedly contacted him without permission in violation of the TCPA and other statutes. DME did not respond to the complaint, resulting in entry of default and default judgment. DME later asserted that it mistakenly believed it was not required to respond, that the summons was confusing and inaccurate, and that it had potential defenses concerning whether the calls were associated with DME and whether Ewing had consented. DME also claimed that the summons contained a handwritten address belonging to its registered agent, which transmitted the summons and complaint to DME personnel.

PROCEDURAL HISTORY

Anton Ewing sued DME Capital, LLC, alleging violations of the Telephone Consumer Protection Act and other statutes based on repeated unsolicited contacts. DME failed to respond, the Clerk entered default, and the Court entered default judgment. The Court granted DME's motion to set aside the default judgment, denied its motion to dismiss for improper service, denied its related Rule 11 sanctions motion, and denied a judicial-notice request as moot.

DISPOSITION

other

CASES CITED

- Eitel v. McCool, 782 F.2d 1470, 1472 (9th Cir. 1986)
- Brandt v. American Bankers Ins. Co. of Fla., 653 F.3d 1108, 1111 (9th Cir. 2011)
- United States v. Signed Pers. Check No. 730 of Yubran S. Mesle, 615 F.3d 1085, 1091 (9th Cir. 2010)
- TCI Grp. Life Ins. Plan v. Knoebber, 244 F.3d 691, 696-701 (9th Cir. 2001)
- Egelhoff v. Egelhoff, a minor, by and through her natural parent, Breiner, et al., Egelhoff v. Egelhoff ex rel. Breiner, 532 U.S. 141 (2001)
- Falk v. Allen, 739 F.2d 461, 463 (9th Cir. 1984)
- United States v. Aguilar, 782 F.3d 1101, 1107 (9th Cir. 2015)
- Meyer v. Portfolio Recovery Assocs., LLC, 707 F.3d 1036, 1043 (9th Cir. 2012)
- Aussieker v. Lee, No. 2:19-cv-00365-JAM-CKD PS, 2021 WL 352438, at *4 (E.D. Cal. Feb. 2, 2021)
- Beecher v. Wallace, 381 F.2d 372, 373 (9th Cir. 1967)
- Pathak v. Exotic Meat Mkt., Inc., No. 2:16-cv-00368-JAD-VCF, 2016 WL 3219869, at *1 (D. Nev. June 6, 2016)
- Graham v. CNN Inc., No. 2:21-cv-07417-MCS-AGR, 2021 U.S. Dist. LEXIS 249927, at *2-3 (C.D. Cal. Dec. 30, 2021)
- Kingvision Pay-Per-View Ltd. v. Lake Alice Bar, 168 F.3d 347, 350 (9th Cir. 1999)
- Direct Mail Specialists, Inc. v. Eclat Computerized Tech., Inc., 840 F.2d 685, 688-90 (9th Cir. 1988)