

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Gutierrez v. Webcollex, LLC

Gutierrez · No. 2:23-cv-0988 AC · Decided March 19, 2025

SUMMARY

The United States District Court for the Eastern District of California issued an order to show cause after the Clerk entered default against Webcollex, LLC and the plaintiff took no further action. The court ordered the plaintiff to explain by April 2, 2025, why the action should not be dismissed for failure to prosecute, while stating that filing a motion for default judgment would discharge the order.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Allison Claire
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	March 19, 2025
DOCKET	2:23-cv-0988 AC
DISPOSITION	other
PROCEDURAL POSTURE	Order to show cause why the action should not be dismissed for failure to prosecute after the Clerk entered default against the defendant and the plaintiff took no further action.
STANDARD OF REVIEW	The decision whether to grant or deny default judgment lies within the district court's sound discretion and is evaluated under the Eitel factors.
PRECEDENTIAL VALUE	Nonprecedential district court order

TOPICS

- default judgment
- default
- civil procedure
- sanctions

PRACTICE AREAS

- civil procedure
- Fair Debt Collection Practices Act

QUESTIONS PRESENTED

1. Whether entry of default by the Clerk automatically entitles plaintiff to a default judgment.
2. What plaintiff must do to obtain default judgment after entry of default.
3. Whether plaintiff's failure to pursue default judgment warranted an order to show cause for failure to prosecute.

HOLDINGS

1. Entry of default is not entry of default judgment and does not automatically entitle the plaintiff to a court-ordered judgment.
2. The district court exercises sound discretion in deciding whether to grant default judgment and considers the seven Eitel factors.
3. After entry of default, well-pleaded factual allegations in the operative complaint are generally taken as true, except allegations concerning damages; facts not pleaded and legally insufficient claims are not established by default.

KEY QUOTATIONS

“The court notes that the Clerk’s entry of default is not an entry of default judgment against the defendant but instead a prerequisite to filing a motion for default judgment.” (at 1)

“A defendant’s default does not automatically entitle the plaintiff to a court-ordered judgment.” (at 1)

“Although well-pleaded allegations in the complaint are admitted by a defendant’s failure to respond, “necessary facts not contained in the pleadings, and claims which are legally insufficient, are not established by default.”” (at 2)

FACTUAL BACKGROUND

Plaintiff filed a Fair Debt Collection Practices Act action against Webcollex, LLC. Defendant initially appeared and answered, but its counsel later withdrew. The court struck the answer and the Clerk entered default against defendant; plaintiff then took no further action, including failing to move for default judgment.

PROCEDURAL HISTORY

Plaintiff filed the complaint on May 25, 2023, and defendant answered through counsel. Defense counsel later withdrew. After plaintiff moved to strike defendant's answer, the court granted the motion and the Clerk entered default on January 14, 2025. Because plaintiff had not pursued a default judgment or otherwise acted after entry of default, the court ordered plaintiff to show cause why the action should not be dismissed for failure to prosecute.

DISPOSITION

other

CASES CITED

- PepsiCo, Inc. v. Cal. Sec. Cans, 238 F. Supp. 2d 1172, 1174 (C.D. Cal. 2002)
- Draper v. Coombs, 792 F.2d 915, 924-25 (9th Cir. 1986)
- Aldabe v. Aldabe, 616 F.2d 1089, 1092 (9th Cir. 1980)
- Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986)
- TeleVideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917-18 (9th Cir. 1987) (per curiam)
- Cripps v. Life Ins. Co. of N. Am., 980 F.2d 1261, 1267 (9th Cir. 1992)

OPINION

Gutierrez v. Webcollex, LLC

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 LISA GUTIERREZ, No. 2:23-cv-0988 AC 12 Plaintiff,

13 v. ORDER TO SHOW CAUSE

14 WEBCOLLEX, LLC,

15 Defendant. 16

17 Plaintiff filed her complaint May 25, 2023, and defendant initially appeared with counsel 18
and answered. ECF Nos. 9, 12. The parties consented to the undersigned hearing this case for all
19 purposes and the case was reassigned accordingly on October 18, 2023. ECF No. 16. On May
7, 20 2024, defense counsel moved to withdraw from the case and the request was ultimately
granted 21 on August 29, 2024. ECF No. 37. On December 3, 2024, plaintiff moved to strike
defendant's 22 answer so that default against defendant could be entered. ECF No. 40. The motion
was granted 23 on January 14, 2025, and the Clerk of Court entered default against defendant.
ECF No. 42, 43. 24 Plaintiff has not taken any action in this case since entry of default. 25 The
court notes that the Clerk's entry of default is not an entry of default judgment against 26 the
defendant but instead a prerequisite to filing a motion for default judgment. If the plaintiff is 27
granted entry of default by the Clerk of the Court, plaintiff may apply to the court to obtain a 28
default judgement. Fed. R. Civ. Proc. 55(b)(2). Plaintiff must file a motion for entry of default 1
judgment and notice the motion for hearing before the undersigned pursuant to Local Rule 230. 2
Plaintiff should also note that "[a] defendant's default does not automatically entitle the plaintiff 3
to a court-ordered judgment." PepsiCo, Inc. v. Cal. Sec. Cans, 238 F. Supp. 2d 1172, 1174 (C.D.
4 Cal. 2002) (citing Draper v. Coombs, 792 F.2d 915, 924-25 (9th Cir. 1986)); see Fed. R. Civ. P.
5 55(b) (governing the entry of default judgments). Instead, the decision to grant or deny an 6
application for default judgment lies within the district court's sound discretion. Aldabe v. 7
Aldabe, 616 F.2d 1089, 1092 (9th Cir. 1980). In making this determination, the court will 8
consider the following factors: 9 (1) the possibility of prejudice to the plaintiff; (2) the merits of
plaintiff's substantive claim; (3) the sufficiency of the complaint; 10 (4) the sum of money at stake

in the action; (5) the possibility of a dispute concerning material facts; (6) whether the default was
11 due to excusable neglect; and (7) the strong policy underlying the Federal Rules of Civil
Procedure favoring decisions on the merits. 13 *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th
Cir. 1986). 14 Default judgments are ordinarily disfavored. *Id.* at 1472. Generally, once default is
15 entered by the Clerk, well-pleaded factual allegations in the operative complaint are taken as
true, 16 except for those allegations relating to damages. *TeleVideo Sys., Inc. v. Heidenthal*, 826
F.2d 17 915, 917-18 (9th Cir. 1987) (per curiam). Although well-pleaded allegations in the
complaint are 18 admitted by a defendant's failure to respond, "necessary facts not contained in
the pleadings, and 19 claims which are legally insufficient, are not established by default." *Cripps*
v. Life Ins. Co. of N. 20 Am., 980 F.2d 1261, 1267 (9th Cir. 1992). 21 Local Rule 110 provides
that failure to comply with court orders or the Local Rules "may 22 be grounds for imposition of
any and all sanctions authorized by statute or Rule or within the 23 inherent power of the Court."
24 Accordingly, IT IS HEREBY ORDERED that: 25 1. Plaintiff is Ordered to Show Cause, in
writing no later than April 2, 2025, why this action 26 should not be dismissed for failure to
prosecute. 27 2. Plaintiff's filing of a motion for default judgment will be deemed good cause
shown and 28 will discharge this order. 1 3. If plaintiff fails to comply with this order, the case will
be dismissed. 2 | DATED: March 18, 2025 . 3 Ctlhter— Lane

4 ALLISON CLAIRE

UNITED STATES MAGISTRATE JUDGE

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