

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Ortiz v. Lucero Ag Services, Inc.

Ortiz · No. 1:23-cv-01319-JLT-EPG · Decided March 24, 2025

SUMMARY

The court recommends striking Lucero Ag Services, Inc.’s answer, entering default against it under Federal Rule of Civil Procedure 55(a), and permitting the plaintiffs to move for default judgment. The recommendations are based on the corporation’s failure to obtain counsel, comply with a court order, respond to discovery-related proceedings, or otherwise defend the action.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	March 24, 2025
DOCKET	1:23-cv-01319-JLT-EPG
DISPOSITION	other
PROCEDURAL POSTURE	Magistrate judge findings and recommendations recommending that the corporate defendant's answer be stricken, that default be entered under Federal Rule of Civil Procedure 55(a), and that plaintiffs be permitted to seek default judgment.
STANDARD OF REVIEW	The findings and recommendations were subject to written objections within fourteen days and review by the assigned district judge under 28 U.S.C. § 636(b)(1).
PRECEDENTIAL VALUE	nonprecedential

TOPICS

- default
- default judgment
- sanctions
- pleadings
- civil procedure

PRACTICE AREAS

- civil procedure
- employment law

QUESTIONS PRESENTED

1. Whether the court may strike a corporate defendant's answer when the corporation is no longer represented by counsel and has failed to comply with court orders and defend the action.
2. Whether the Clerk should be directed to enter default against the unrepresented corporate defendant under Federal Rule of Civil Procedure 55(a).
3. Whether plaintiffs should be permitted to move for default judgment after entry of default.

HOLDINGS

1. A corporation may appear in federal court only through licensed counsel; because Lucero Ag Services, Inc. lacked counsel, failed to comply with the court's order concerning representation, and failed to defend the case, its answer should be stricken.
2. The Clerk should be directed to enter default against Lucero Ag Services, Inc. under Federal Rule of Civil Procedure 55(a) after the defendant's answer is stricken and the corporation remains unrepresented and nonparticipating.
3. Plaintiffs should be permitted to move for default judgment against Lucero Ag Services, Inc. after entry of default.

KEY QUOTATIONS

“it has been the law for the better part of two centuries, for example, that a corporation may appear in the federal courts only through licensed counsel.” (at 2)

“a defaulted defendant should be treated as a non-party” (at 3)

FACTUAL BACKGROUND

Plaintiffs Azucena Ortiz, Gustavo Meza, and Dominga Espinoza brought a putative class action against Lucero Ag Services, Inc. and other defendants, primarily alleging California labor-law violations. Lucero Ag Services initially answered through counsel, but its counsel later withdrew. Despite an order requiring the company to state whether it intended to obtain counsel, the company did not respond, did not participate in discovery proceedings, and did not otherwise defend the action.

PROCEDURAL HISTORY

Plaintiffs filed a putative class action alleging primarily violations of California labor laws and later amended their complaint. Lucero Ag Services, Inc. and a co-defendant initially answered through counsel, but counsel was permitted to withdraw. After the court ordered the defendants to advise whether they intended to retain counsel, neither responded, defended the action, responded to a discovery motion, or appeared at the hearing. The court issued findings and recommendations, subject to objections and review under 28 U.S.C. § 636(b)(1).

DISPOSITION

other

CASES CITED

- Rowland v. California Men's Colony, Unit II Men's Advisory Council, 506 U.S. 194, 201-02 (1993)
- Eagles Nest Outfitters, Inc. v. Taomore, Inc., No. 2:23-CV-00466-GW-(EX), 2024 WL 3008866, at *2 (C.D. Cal. Apr. 2, 2024)
- Osgood v. Main Street Mktg., LLC, No. 16CV2415-GPC(BGS), 2017 WL 3194460, at *2 (S.D. Cal. July 27, 2017)
- Galtieri-Carlson v. Victoria M. Morton Enterprises, Inc., No. 2:08-CV-01777, 2010 WL 3386473, at *3 (E.D. Cal. Aug. 26, 2010)
- Jules Jordan Video, Inc. v. 144942 Canada Inc., 617 F.3d 1146, 1159 (9th Cir. 2010)
- Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014)
- Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)

OPINION

1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 EASTERN DISTRICT OF CALIFORNIA
9 10 AZUCENA ORTIZ, et al., Case No. 1:23-cv-01319-JLT-EPG 11 Plaintiffs, FINDING AND
RECOMMENDATIONS TO (1) STRIKE ANSWER OF DEFENDANT 12 v. LUCERO AG
SERVICES, INC.; (2) ENTER DEFAULT AGAINST THIS DEFENDANT; 13 LUCERO AG
SERVICES, INC., et al., AND (3) GRANT PLAINTIFFS PERMISSION TO MOVE FOR
DEFAULT JUDGMENT 14 Defendants.

AGAINST THIS DEFENDANT 15 OBJECTIONS, IF ANY, DUE WITHIN 14 DAYS 16
ORDER DIRECTING CLERK OF COURT TO 17 MAIL LUCERO DEFENDANTS 18 As
explained below, because Defendant Lucero Ag Services, Inc. is no longer represented 19 by
counsel, and has failed to comply with court orders and defend this case, the Court will 20
recommend that its answer be stricken and that the Clerk of Court be directed to enter a default 21
against it under Federal Rule of Civil Procedure 55(a).

Further, the Court will recommend that 22 Plaintiffs be permitted to move for default judgment
against this Defendant. 23 I. BACKGROUND 24 Plaintiffs Azucena Ortiz, Gustavo Meza, and
Dominga Espinoza filed this putative class 25 action on September 5, 2023, mostly alleging
violations of California state labor laws. (ECF No. 26 1). They amended their complaint on August
14, 2024.

(ECF No. 45). Plaintiffs sue five named 27 Defendants: (1) Lucero Ag Services, Inc.; (2)
Paragroup Farms, Inc.; (3) Ricardo Ulices Lucero- 28 1 Ambrosio; (4) 559 Ag Corp., and (5)
Artemio Fidel Salazar Luna. 2 The Lucero Defendants (Lucero Ag Services, Inc., and Ricardo
Ulices Lucero-Ambrosio). 3 filed an answer to the amended complaint and were represented by
counsel for part of the case.

4 (ECF No. 47). However, on November 15, 2024, the Court granted their counsel's motion to
withdraw from the case. (ECF Nos. 49, 61). In the order granting counsel permission to withdraw,
5 the Court instructed as follows: "Within 30 days from the entry of this order, Defendants Lucero

6 Ag Services, Inc., and Ricardo Ulices Lucero-Ambrosio shall file a notice with the Court advising 7 whether they intend to hire counsel, and if so, advising how long they need to do so.” (ECF No. 8 61).

Although this order was sent to the last known address of both Lucero Defendants, neither 9 have responded to the order or filed anything else in this case. Notably, Plaintiffs filed a motion to 10 compel discovery responses on January 31, 2025, and the Lucero Defendants did not respond to 11 the motion or appear at the hearing. (ECF No. 66).

Accordingly, by all appearances, the Lucero 12 Defendants have decided not to participate in this case. 13 II. LEGAL STANDARDS 14 Because Lucero Ag Services, Inc. lacks counsel, it currently cannot appear in this case. 15 See *Rowland v. California Men’s Colony, Unit II Men’s Advisory Council*, 506 U.S. 194, 201–02 16 (1993) (“It has been the law for the better part of two centuries, for example, that a corporation 17 may appear in the federal courts only through licensed counsel.”).

18 In cases where a corporate defendant has failed to obtain counsel and defend the case, 19 courts have used their inherent authority to strike the defendant’s answer, direct the entry of a 20 default under Federal Rule of Civil Procedure 55(a), and then permit the plaintiff to move for a 21 default judgment. See, e.g., *Eagles Nest Outfitters, Inc. v. Taomore, Inc.*, No. 2:23-CV-00466- 22 GW- (EX), 2024 WL 3008866, at *2 (C.D.

Cal. Apr. 2, 2024) (“When a corporation fails to retain 23 legal representation, entry of default is a permissible sanction for failure to comply with local rules requiring representation by counsel.”) (citation and quotation marks omitted); *Osgood v. 24 Main Street Mktg., LLC*, No. 16CV2415-GPC(BGS), 2017 WL 3194460, at *2 (S.D. Cal. July 27, 25 2017) (“Procedurally, courts have stricken the answers of corporate defendants who have failed to 26 defend themselves, directed entry of default, and then allowed the plaintiff to move for default 27 judgment.”); *Galtieri-Carlson v. Victoria M. Morton Enterprises, Inc.*, No. 2:08-CV-01777, 2010 28 1 WL 3386473, at *3 (E.D.

Cal. Aug. 26, 2010) (“Courts have stricken the answers of defendants 2 who have failed to defend themselves.”). Likewise, Local Rule 110 permits sanctions for non- 3 compliance with court orders: “Failure of counsel or of a party to comply with these Rules or with 4 any order of the Court may be grounds for imposition by the Court of any and all sanctions authorized by statute or Rule or within the inherent power of the Court.” LR 110.

5 With this authority in mind, the Court will recommend that the answer of Defendant 6 Lucero Ag Services, Inc. be stricken, that an entry of default be entered against it by the Clerk of 7 Court, and that Plaintiffs be permitted to move for default judgment against it. Importantly, 8 despite the Court giving this Defendant 30 days to file a notice as to whether it intends to hire 9 counsel,

Defendant has failed to comply with the Court's order, and it legally cannot proceed without counsel.

Moreover, Defendant has provided no indication that it intends to defend this case, e.g., it filed nothing in response to Plaintiffs' motion to compel and did not attend the hearing. And given that Defendant has chosen not to participate in this case, it should be treated as a non-party going forward. See *Jules Jordan Video, Inc. v. 144942 Canada Inc.*, 617 F.3d 1146, 1159 (9th Cir.

2010) (noting that "a defaulted defendant should be treated as a non-party"). III. ORDER, CONCLUSION, AND RECOMMENDATIONS Accordingly, IT IS ORDERED that the Clerk of Court is directed to mail a copy of these findings and recommendations to both of the following addresses on the docket for both Defendants Lucero Ag Services, Inc., and Ricardo Ulices Lucero-Ambrosio: (1) 529 South D 19 Street, Madera, CA 93638; and (2) 3573 Rocky Bottom Street, Madera, CA 93637.

(See ECF No. 20 61). Further, for the reasons given above, IT IS RECOMMENDED as follows: 1. The answer of Defendant Lucero Ag Services, Inc. be stricken. (ECF No. 47). 2. The Clerk of Court be directed to enter a default as to Defendant Lucero Ag Services, Inc. pursuant to Federal Rule of Civil Procedure 55(a). 3. Plaintiffs be given permission to move for default judgment against Defendant Lucero Ag Services, Inc. These Findings and Recommendations will be submitted to the United States District Court Judge assigned to this action pursuant to the provisions of 28 U.S.C. § 636 (b)(1).

Within 14 days after being served with a copy of these Findings and Recommendations, any party may file written objections with the Court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Any objections shall be limited to no more than fifteen (15) pages, including exhibits.

Further, any reply to the objections shall be served and filed within fourteen (14) days after service of the objections. The parties are advised that failure to file objections within the specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir.

1991)).? | IT IS SO ORDERED. 1, | Dated: March 24, 2025 [see UNITED STATES MAGISTRATE JUDGE 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28