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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	SACV 18-2243 JVS (JDEx)	Date	March 28, 2019
Title	Beijing Y-Axis International Trading Co., Ltd. v. Mei Body Care Spa		

Present: The Honorable	James V. Selna
Lisa Bredahl/Rolls Royce Paschal	Not Present
Deputy Clerk	Court Reporter
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
Not Present	Not Present

Proceedings: (IN CHAMBERS) Minute Order Regarding Application for Default Judgment

Petitioner Beijing Y-Axis International Trading Co., Ltd. ("BYA") filed an application for an order entering default judgment against Respondent Mei Body Care Spa ("Mei") on BYA's Petition to Confirm Arbitration Award ("Petition") pursuant to Federal Rule of Civil Procedure 55(b). App., Docket No. 13. BYA subsequently filed a notice of errata and amended papers. Docket No. 15. The Court will refer to the amended papers for purposes of this Order. Mei has not filed a response to BYA's application for default judgment.

For the following reasons, the Court **grants** the motion.

I. BACKGROUND

The Petition alleges the following. BYA is a company duly incorporated and existing under the laws of the People's Republic of China. Petition, Docket No. 1 ¶ 1. Mei is a California corporation. Id. ¶ 2.

On June 7, 2017, BYA and Mei entered into a contract under which BYA agreed to buy 50 sets of "BIO-RAD PCR" from Mei for $157,500. Id. ¶ 10, Ex. A. The same day, BYA paid Mei $157,500. Id. ¶ 12, Ex. A. Mei agreed to deliver the goods to BYA by December 30, 2017. Id. ¶ 10, Ex. A.

On June 29, 2017, BYA and Mei entered into another contract under which BYA agreed to buy 5 sets of "SimpliAmp Thermal Cycler PCR," 5 sets of "ProFlex 3x32-well PCR System," and 2 sets of "7500 Real-Time PCR" for $91,625.50. Id. ¶ 11, Ex. B. The next day, BYA paid Mei $91,652.50. Id. ¶ 12. Mei also agreed to deliver these goods to

BYA by December 30, 2017. Id. ¶ 11, Ex. B.

Despite having received a total of $249,152.50 pursuant to these two contracts, Mei did not delivery any goods to BYA. Id. ¶ 13. In December 2017, Mei notified BYA that it could not deliver the goods as required under either contract. Id. ¶ 14. Mei also promised to return the $249,152.50; specifically, Mei promised to return $157,500 to BYA by December 20, 2017, and $91,652.50 by December 28, 2017. Id. Ultimately, Mei never returned any of the funds it had received pursuant to the parties' contracts. Id. ¶¶ 15, 16.

Both contracts at issue contain an arbitration clause requiring all disputes in connection with the agreements to be submitted to the China International Economic and Arbitration Commission ("Arbitration Commission"), with all decisions made by the Arbitration Commission "final and binding upon both parties." Id. ¶¶ 17, 18, Ex. A ¶ 17, Ex. B ¶ 17.

On January 30, 2018, BYA commenced an arbitration proceeding before the Arbitration Commission for breach of contract. Id. ¶ 19. Mei did not appear at the July 13, 2018 hearing, and BYA submitted evidence in support of its case. Id. ¶¶ 22–27. On September 6, 2018, the Arbitration Commission issued a written "Arbitral Award." Id. ¶¶ 29, 30, Ex. C at 24. The Arbitral Award ordered Mei to: (1) return $249,1520.50 to BYA for its payments for goods which were never delivered; (2) pay a 5% fine to BYA, or $12,457.63, in accordance with provisions in both contracts at issue; and (3) reimburse BYA for its arbitration fees in the amount of RMB 77,263.[1] Id. ¶ 30, Ex. C at 33. To date, Mei has not paid any portion of the award to BYA. Id. ¶ 32.

On December 18, 2018, BYA brought this action to confirm its arbitration award against Mei. Petition, Docket No. 1. After Mei was served with a copy of the Summons and Petition, the Clerk of Court entered Mei's default on February 12, 2019. Docket No. 11. BYA now seeks default judgment against Mei. App., Docket No. 15-1.

II. LEGAL STANDARD

[1] The Petition indicates that, as of September 6, 2018, RMB 77,236 was equal to $11,303.03 USD. Petition, Docket No. 1, Prayer for Relief. Therefore, the Court will use $11,303.03 for arbitration fees in its damages calculation for the instant motion.

A. Procedural Requirements

For a default judgment, a plaintiff must satisfy the procedural requirements of the Federal Rules of Civil Procedure. Rule 54(c) states that a default judgment cannot grant relief that is different from the requested relief in a complaint. Fed. R. Civ. P. 54(c). Under Rule 55(a), a clerk must enter a default when a defendant has failed to plead, defend, or appear in any form. Fed. R. Civ. P. 55(a). Lastly, if a defaulting party has appeared in an action, then a plaintiff needs to serve a motion for default on the defaulting party. Fed. R. Civ. P. 55(b)(2).

In addition, a party seeking a default judgment must satisfy the requirements of Local Rule 55-1. To satisfy Local Rule 55-1, a plaintiff needs to submit a declaration establishing (1) when the clerk entered a default; (2) who the clerk entered the default against; (3) whether the defaulting party is an infant or incompetent; (4) whether the defaulting party is a member of the U.S. military; and (5) whether the plaintiff served a notice of the motion on the defaulting party, if required by Rule 55(b)(2). L.R. 55-1.

B. Substantive Requirements

The Ninth Circuit has identified seven factors (together, the "Eitel factors") that a court considers when determining whether to grant a default judgment: (1) the possibility of prejudice to the plaintiff; (2) the merits of the plaintiff's substantive claim; (3) the sufficiency of the complaint; (4) the sum of money at issue; (5) the possibility of a dispute regarding material facts; (6) whether the defendant's default was because of excusable neglect; and (7) the strong policy favoring decisions on the merits. Eitel v. McCool, 782 F.2d 1470, 1471–72 (9th Cir. 1986).

III. DISCUSSION

A. Procedural Requirements

BYA satisfies the procedural requirements for default judgment. BYA submits a declaration stating that the clerk entered default against Mei on February 12, 2019. Declaration of Lianlian Wu ("Wu Decl."), Docket No. 15-2 ¶ 3. The declaration also states that Mei is a California corporation, and is thus not an infant, an incompetent

person, or a member of the military. Id. ¶ 4. Finally, Mei has not appeared in this action; thus, BYA is not required to declare that it served notice of this application on Mei. Accordingly, BYA has met the procedural requirements for default judgment under Local Rule 55-1.[2]

B. Eitel Factors

1. Possibility of Prejudice to BYA

Under the first Eitel factor, a court needs to examine whether a plaintiff will experience prejudice if he does not receive a default judgment. Eitel, 782 F.2d at 1472. If, absent a default, a plaintiff has no remedy, then he will suffer prejudice. Philip Morris USA, Inc. v. Castworld Prod., Inc., 219 F.R.D. 494, 499 (C.D. Cal. 2003); PepsiCo, Inc. v. Cal. Sec. Cans, 238 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002).

Here, Mei is in default and has not appeared in this action. Therefore, absent a default judgment, BYA will be entirely denied recovery. Thus, this factor weighs in favor of entry of default judgment.

2. Merits of CGI's Substantive Claims and Sufficiency of the Complaint

The second and third Eitel factors require that a plaintiff state a claim sufficient to recover. PepsiCo, 238 F. Supp. 2d at 1175. Foreign arbitration agreements falling under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards[3] ("the Convention") are governed by federal law; specifically, by Chapter 2 of

[2] To enter default judgment, the Court must also determine that it has subject matter jurisdiction over the action and personal jurisdiction over the defendants. See In re Tuli, 172 F.3d 707, 712 (9th Cir. 1999). The Court has subject matter jurisdiction over this action for confirmation of a foreign arbitration award because the parties' arbitration agreements fall under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("Convention"); thus, the Court has jurisdiction under 28 U.S.C. § 1331, 9 U.S.C. §§ 1, et seq., and 9 U.S.C. §§ 201–03. The Court has personal jurisdiction over Mei because it is alleged to be a California corporation.

[3] June 10, 1958, 21 U.S.T. 2519, T.I.A.S. No. 6997.

the Federal Arbitration Act ("FAA"). 9 U.S.C. §§ 201, et seq.[4] A foreign arbitration agreement (i.e., an agreement where both parties are not United States citizens) falls under the Convention if it arises out of a "commercial" legal relationship. Id. § 202. Parties to foreign arbitration agreements falling under the Convention can apply to the district court for an order confirming an arbitration award. Id. § 207. Section 207 requires courts to confirm foreign arbitration awards absent "grounds for refusal or deferral of recognition or enforcement of the award specified in the . . . Convention." Id.

Therefore, the Court can only refuse or defer recognition or enforcement of a foreign arbitration award falling under the Convention based on one of the seven grounds listed in Article V of the Convention.[5] See China Nat'l Metal Prods. Import/Export Co.

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[4] Under 9 U.S.C. § 208, "Chapter 1 [of the Federal Arbitration Act] applies to actions and proceedings brought under [Chapter 2] to the extent that chapter is not in conflict with [Chapter 2] or the Convention as ratified by the United States."

[5] Article V of the Convention states:

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:

> (a) The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
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> (b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or
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> (c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or
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> (d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

v. Apex Digital, Inc., 379 F.3d 796, 799–800 (9th Cir. 2004); Seung Woo Lee v. Imaging3, Inc., 283 Fed.App'x 490, 492 (9th Cir. 2008).

Here, BYA has alleged the existence of valid arbitration agreements between the parties falling under the Convention, agreements which it has submitted into the record. Petition, Docket No. 1, Exs. A, B. BYA alleges that it is a citizen of China, and Mei is a citizen of the United States, both signatory nations to the Convention. Id. ¶¶ 1–3. BYA further alleges that the arbitration award it obtained in China arose out of two commercial contracts between the parties for goods. Id. ¶¶ 10–16. Furthermore, Mei has not appeared in this action to present any arguments as to why the arbitration award should not be confirmed. Finally, there is no indication that this case presents any of the circumstances for refusal or deferral of recognition or enforcement of the award under Article V of the Convention. See supra, note 5. On a motion for default judgment, the Court must take all well-pled allegations as true. Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Therefore, Eitel factors 2 and 3 weigh in favor of default judgment because BYA states a claim for confirmation of its foreign arbitration award under the FAA and the Convention.

3. Sum of Money at Stake

The fourth Eitel factor requires that the Court "consider the amount of money at stake in relation to the seriousness of Defendants' conduct." PepsiCo, 238 F. Supp. 2d at 1176. In doing so, the Court must "assess whether the recovery sought is proportional to

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> (e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:

> (a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or
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> (b) The recognition or enforcement of the award would be contrary to the public policy of that country.

Convention, Article 5.

the harm caused by [a] defendant's conduct." Landstar Ranger, Inc. v. Parth Enters., Inc., 725 F. Supp. 2d 916, 921 (N.D. Cal. 2010).

BYA seeks a default judgment of $272,913.16 – the amount of damages and costs it was awarded in arbitration. App., Docket No. 15-1 at 9. BYA has already justified these damages with supporting evidence in a full evidentiary hearing before the Arbitration Commission, and it attaches the allegedly breached contracts to its Petition. Petition, Docket No. 1, Exs. A, B. Therefore, the damages are proportional to BYA's harm.

4. Possibility of Disputed Material Facts

The fifth Eitel factor examines whether there is likelihood of a dispute of material facts. 782 F.2d at 1472. A court accepts all well-pleaded factual allegations in a complaint as true when examining whether to grant a default judgment. Televideo, 826 F.2d at 917–18. When a plaintiff pleads the facts that are necessary for him to prevail on his claims, a dispute over material facts is unlikely. Castworld, 219 F.R.D. at 498.

Here, Mei fails to rebut the presumption in BYA's favor because Mei did not oppose the motion for entry of default judgment. Therefore, this factor also favors entry of default judgment.

5. Possibility of Excusable Neglect

The sixth Eitel factor considers whether a defendant's inaction is due to excusable neglect. 782 F.2d at 1472. Excusable neglect is unlikely when a defendant is properly served and, therefore, aware of a plaintiff's pending action in court. Wecosign, Inc., v. IFG Holdings, Inc., 845 F. Supp. 2d 1072, 1082 (C.D. Cal. 2012). Here, the Mei was properly served. Therefore, there is very little possibility of excusable neglect.

6. Policy for Deciding Cases on the Merits

There is a strong policy for deciding cases on their merits "whenever reasonably possible." Eitel, 782 F.2d at 1472. Nevertheless, a defendant's failure to appear or to meaningfully participate in litigation makes a decision on the merits "impractical if not impossible." Elektra Entm't Grp. Inc. v. Crawford, 226 F.R.D. 338, 392 (C.D. Cal.

2005); Wecosign, 845 F. Supp. 2d at 1083. Mei has not appeared in this action. Therefore, this factor does not preclude default judgment.

In sum, the Eitel factors support the entry of default judgment against Defendants.

C. Relief

"A default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings." Fed. R. Civ. P. 54(c). Where damages are liquidated, i.e., capable of ascertainment from definite figures contained in documentary evidence or detailed affidavits, default judgment may be entered without a damages hearing. Davis v. Fendler, 650 F.2d 1154, 1161 (9th Cir. 1981); see also Fed. R. Civ. P. 55(b)(2) (district court has discretion whether or not to conduct a hearing on default judgment).

Here, BYA obtained an arbitration award of $272,913.16 against Mei for its breach of two contracts between the parties ($249,152.50 for payments for goods + $12,457.63 penalty + $11,303.03 (or RMB 77,263) for arbitration fees). Arbitral Award, Docket No. 1, Ex. C at 33. BYA's Petition in this Court specifically requests that amount. Petition, Docket No. 1, Prayer for Relief. And BYA now seeks that amount on this application for default judgment. App., Docket No. 15-1 at 9. Therefore, BYA adequately supports its claim for relief of a sum certain.

IV. CONCLUSION

For the foregoing reasons, the Court **grants** the motion. The Court finds that oral argument would not be helpful in this matter. Therefore, the **April 1, 2019 hearing is vacated**. Fed. R. Civ. P. 55(b)(2), 78; L.R. 7-15; Davis, 650 F.2d at 1161.

IT IS SO ORDERED.

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