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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MAINSTREAM MEDIA EC,

Plaintiff,

v.

PETER RIVEN, et al.,

Defendants.

No. C 08-3623 PJH

NOTICE AND ORDER

Plaintiff Mainstream Media, EC, filed the above-entitled action on July 29, 2008, asserting claims against five defendants. To date, plaintiff has dismissed two of the defendants. On December 2, 2008, plaintiff filed a motion to authorize alternative service on defendant Alexander Hydes, asserting that it had served Mr. Hydes with the summons, complaint, and all motion papers by e-mail. The court granted the motion on December 18, 2008. On January 26, 2009, plaintiff filed a request for entry of default against Mr. Hydes. Default was entered by the clerk on January 28, 2009.

The court is in receipt of a letter from Mr. Hydes, dated January 26, 2009, in which he states that he had received a copy of the request for entry of default, and asserting that he wishes to file a motion to dismiss, apparently intending to assert lack of personal jurisdiction. He also disputes plaintiff's claim that certain documents were properly served by mail.

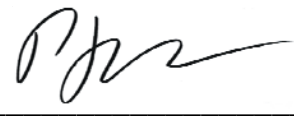
The court interprets this letter as an attempt to contest the entry of default. If that is Mr. Hydes' intent, he must file a motion requesting that the entry of default be set aside. The court has the power to set aside the entry of default "for good cause." Fed. R. Civ. P.

1 55(c). In general, the Ninth Circuit applies the same standard to a motion to set aside a
2 default under Rule 55(c) as it does to a motion to set aside a default judgment, where the
3 defendant must demonstrate “mistake, inadvertence, surprise, or excusable neglect.” See
4 Fed. R. Civ. P. 60(b)(1); see also Schwarzer, Tashima & Wagstaffe, Federal Civil
5 Procedure Before Trial (2008) §§ 6:153, et seq.

6 If Mr. Hydes wishes to file a motion to set aside the default, he must do so diligently
7 and “within a reasonable time.” Schwarzer, et al., §§ 6:149-152.

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9 **IT IS SO ORDERED.**

10 Dated: February 10, 2009



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12 PHYLLIS J. HAMILTON
13 United States District Judge

United States District Court
For the Northern District of California

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