

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ELECTRONIC FRONTIER  
FOUNDATION,

Plaintiff,

v.

GLOBAL EQUITY MANAGEMENT (SA)  
PTY LTD,

Defendant.

Case No. [17-cv-02053-MEJ](#)

**ORDER FOR REASSIGNMENT WITH  
REPORT & RECOMMENDATION RE:  
MOTION FOR DEFAULT JUDGMENT**

Re: Dkt. No. 14

**INTRODUCTION**

Plaintiff Electronic Frontier Foundation (“EFF”) moves for default judgment on its claims against Defendant Global Equity Management (SA) Pty Ltd (“GEMSA”). Mot., Dkt. No. 14.<sup>1</sup> EFF seeks a judicial declaration that an order and injunction issued by the Supreme Court of Australia “is repugnant to the First Amendment and California law, and is therefore unenforceable pursuant to the SPEECH Act[, 28 U.S.C. § 4104,] and the Declaratory Judgment Act[, 28 U.S.C. § 2201].” *Id.* GEMSA did not respond to the Motion for Default Judgment. Because the undersigned found this matter suitable for disposition without oral argument, it previously vacated the September 7, 2017 hearing pursuant to Federal Rule of Civil Procedure 78(b) and Civil Local Rule 7-(1)(b).

After carefully reviewing the motion and controlling authorities, the undersigned issues this Report and Recommendation. The undersigned **RECOMMENDS** the District Court **DENY** the Motion for Default Judgment for the reasons set forth below. Further, because GEMSA has not consented to magistrate judge jurisdiction, the Clerk of Court shall **REASSIGN** this case to a

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<sup>1</sup> EFF did not request entry of default by the clerk. *See* Docket; Fed. R. Civ. P. 55(b)(1).

1 district court judge for disposition.

## 2 BACKGROUND

3 EFF is the leading non-profit organization defending civil liberties in the digital world.  
4 Compl. ¶ 4, Dkt. No. 1. As part of its mission to support online privacy, free expression, and  
5 innovation, EFF promotes reform of the U.S. patent system so that it supports the development of  
6 new digital technologies, particularly by individuals, nonprofits, and small businesses. *Id.* ¶ 9.  
7 EFF alleges the United States Patent and Trademark Office too often issues questionable patents  
8 for digital technology that is not innovative, and that “patent trolls” acquire those questionable  
9 patents and use the threat of costly litigation to extract exorbitant and unjust licensing fees. *Id.*

10 In 2014, EFF started publishing a series of “Stupid Patent of the Month” articles on its  
11 website to highlight examples of questionable patents that stifle innovation, harm the public, and  
12 can be used to shake down unsuspecting users of commonplace processes or technologies. *Id.* ¶  
13 10. The articles describe the patent, explain the basis for EFF’s opinion that it is stupid, and show  
14 how the patent is or could be misused to stifle innovation or harm the public. *Id.*

15 GEMSA is a privately-held Australian corporation that has filed more than three dozen  
16 patent infringement lawsuits in the Eastern District of Texas. *Id.* ¶¶ 5, 14. GEMSA owns two  
17 patents: U.S. Patent No. 6,690,400 (“the ’400 patent”) and U.S. Patent No. 7,356,677 (“the ’677  
18 patent”). *Id.* ¶ 15. Daniel Nazer, an EFF attorney, decided to name the ’400 patent as the Stupid  
19 Patent of the Month for June 2016 (the “Article”). *Id.* ¶¶ 13, 15; *see id.*, Ex. 5 (article dated June  
20 30, 2016 titled “Stupid Patent of the Month: Storage Cabinets on a Computer” written by Daniel  
21 Nazer). The Article describes the ’400 patent, its history, and its context; it also describes the  
22 litigation surrounding the patent and GEMSA’s role in asserting the patent’s claims. *Id.* ¶¶ 15-17.  
23 The Article concludes with a discussion and criticism of GEMSA’s litigation and a push for patent  
24 litigation reform. *Id.* ¶ 18.

25 In August 2016, GEMSA’s Australian counsel, Pasha Mehr, emailed EFF a letter titled  
26 “Demand of Apology for Slander and Defatory [sic] Statements” (the “Demand Letter”). *Id.* ¶ 20;  
27 *see id.*, Ex. 10 (Demand Letter). GEMSA accused EFF of engaging in “defamatory, false and  
28 malicious slander” by posting the Article “with the intention of portraying [GEMSA]’s

1 intellectual property as stupid in addition to numerous other malicious lies and misleading  
2 statements about the ‘400 patent owned [by GEMSA].’” *Id.* ¶ 20 (quoting Demand Letter).  
3 GEMSA threatened to “institute a suit against [EFF] in a court of law” if EFF did not capitulate to  
4 its demands within two weeks, that is, to issue an apology and retraction, to make diligent efforts  
5 to remove the article from the internet, and pay damages. *Id.* ¶ 21.

6 EFF retained an Australian law firm for the limited purpose of responding to the Demand  
7 Letter. *Id.* ¶ 22. EFF responded on September 13, 2016 (the “First Response”) and explained it  
8 would not accede to GEMSA’s demands and asked GEMSA to clarify which specific statements it  
9 considered defamatory and the legal basis for its claims. *Id.*; *see id.*, Ex. 11 (First Response).  
10 GEMSA did not respond to this letter and instead filed suit against EFF in the Supreme Court of  
11 South Australia. *Id.* ¶ 23. “GEMSA did not properly serve copies of the case-initiating  
12 documents on EFF in the United States pursuant to the Federal Rules of Civil Procedure and the  
13 Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents, and EFF did  
14 not waive service.” *Id.*

15 On or around October 4, 2016, GEMSA filed an Interlocutory Application with the  
16 Australian court seeking an order that EFF “immediately remove” the Article from its website and  
17 that prohibits EFF “‘from publishing any content with respect to [GEMSA’s] intellectual  
18 property.’” *Id.* ¶ 24 (brackets in original) (quoting *id.*, Ex. 12 (Interlocutory Application and  
19 Summons)). In support of its Interlocutory Application, GEMSA filed the Affidavit of Schumann  
20 Rafizadeh. *Id.* ¶ 25; *see id.*, Ex. 13 (Rafizadeh Aff.). On or around October 20, 2016, GEMSA  
21 filed a Statement of Claim and a Second Affidavit of Schumann Rafizadeh. *Id.* ¶ 26. GEMSA did  
22 not serve these documents on EFF; it instead mailed them to EFF’s Australian counsel even  
23 though the firm informed GEMSA it no longer represented EFF. *Id.*

24 GEMSA’s Statement of Claim identifies nine representations that GEMSA alleges are  
25 “misleading of deceptive or likely to mislead or deceive.” *Id.* ¶ 27; *see id.*, Ex. 14 ¶¶ 3, 5  
26 (Statement of Claim). EFF did not appear in the Australian litigation. *Id.* ¶ 33. On or around  
27 October 31, 2016, the Australian court issued an Order with Injunction (the “Australian  
28 Injunction”). *Id.* ¶ 34; *see id.*, Ex. 18 (Australian Inj.). The Injunction orders EFF (1) to

1 immediately remove the Article from its website and not to otherwise disseminate it, and (2) to not  
2 publish any content regarding GEMSA's intellectual property. *Id.* ¶ 34; Australian Inj. ¶¶ 1-2.

3 On January 20, 2017, GEMSA's counsel emailed another letter to EFF (the "Second  
4 Demand Letter") with the Australian Injunction attached. Compl. ¶ 35; *see id.*, Ex. 19 (Second  
5 Demand Letter). GEMSA asserted that by not removing the Article from its website, EFF is in  
6 "continued violation of Australian laws" and "may be liable for contempt of Court" if EFF did not  
7 comply with the Australian court's order. *Id.* ¶ 35 (quoting Second Demand Letter). GEMSA  
8 demanded EFF immediately remove the Article and arrange for any links to the Article to be  
9 removed. *Id.* GEMSA threatened that if EFF does not take such steps, it would "be forced to do  
10 so at [EFF's] expense." *Id.* (quoting Second Demand Letter). GEMSA further demanded EFF  
11 pay damages "in the vicinity of \$750,000.00" within 21 days and stated it would "seek full  
12 monetary damages and equitable relief" that the "relevant court" may deem proper. *Id.* (quoting  
13 Second Demand Letter).

14 EFF responded to the Second Demand Letter on February 10, 2017 (the "Second  
15 Response"). *Id.* ¶ 36; *see id.*, Ex. 20 (Second Response). In its Response, EFF declined to remove  
16 the Article or pay GEMSA damages. *Id.* ¶ 36; Second Resp. Among other things, EFF stated the  
17 Australian court's order is "contrary to longstanding United States law and the U.S. Constitution,  
18 is unenforceable" as "EFF's commentary includes substantially true facts, protected opinion, and  
19 rhetorical hyperbole, and is privileged under the law and the First Amendment of the U.S.  
20 Constitution." *Id.* ¶ 36; Second Resp. at 1.

21 EFF has not removed and does not intend to remove the Article from its website. Compl. ¶  
22 37. "The Article is a statement of EFF's opinion about GEMSA's patent based on disclosed facts  
23 and public information, commentary that is of significant public concern and protected by the First  
24 Amendment to the United States Constitution." *Id.* However, the Australian Injunction casts a  
25 shadow over the legality of EFF's speech about GEMSA's '400 patent and litigation and chills  
26 EFF's further speech. *Id.* ¶ 38. EFF is concerned that without an order declaring the Australian  
27 Injunction repugnant to and unenforceable under U.S law, GEMSA will use the Injunction to  
28 persuade American search engines to "deindex" the Article, which would effectively preclude EFF

1 from speaking publicly on this important U.S. legal and political issues. *Id.* ¶ 39.

2 EFF initiated this lawsuit on April 12, 2017. *See* Compl. It asserts two claims: (1) a claim  
3 for declaratory judgment under the Securing the Protection of our Enduring and Established  
4 Constitutional Heritage (“SPEECH”) Act, 28 U.S.C. §§ 4101-05; and (2) a claim for declaratory  
5 judgment under the Declaratory Judgment Act (“DJA”), 28 U.S.C. §§ 2201-02. *Id.* ¶¶ 40-53. EFF  
6 seeks declarations that the Australian Injunction (1) is repugnant to the United States Constitution  
7 and the laws of California and the United States and (2) cannot be recognized or enforced in the  
8 United States. *Id.*, Prayer for Relief. GEMSA has not answered or otherwise responded to the  
9 Complaint. On July 20, 2017, EFF filed this Motion for Default.

### 10 **REQUEST FOR JUDICIAL NOTICE**

11 Before turning to EFF’s substantive arguments, the undersigned first addresses EFF’s  
12 Request for Judicial Notice. *See* RJN, Dkt. No. 14-1. EFF requests the Court take judicial notice  
13 of (1) the complaint filed in *Global Equity Management (SA) Pty. Ltd. v. Zillow*, Case No. 16-cv-  
14 637 (E.D. Tex.); (2) the complaint filed in *Global Equity Management (SA) Pty. Ltd. v. Airbnb*,  
15 Case No. 15-cv-1700 (E.D. Tex.); and (3) a report from the Federal Judiciary’s Public Access to  
16 Court Electronic Records system which lists every patent infringement suit GEMSA has filed in  
17 any U.S. federal court. *Id.*, Kissinger Decl., Exs. A-C.

18 Under Federal Rule of Evidence 201(b), “[t]he court may judicially notice a fact that is not  
19 subject to reasonable dispute because it: (1) is generally known within the trial court’s territorial  
20 jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot  
21 reasonably be questioned.” As these documents are court filings and matters of public record, the  
22 undersigned takes judicial notice of them. *See Harris v. Cty. of Orange*, 682 F.3d 1126, 1132 (9th  
23 Cir. 2012) (“We may take judicial notice of undisputed matters of public record . . . , including  
24 documents on file in federal or state courts.”).

### 25 **DISCUSSION**

26 In considering whether to enter default judgment, a district court must first determine  
27 whether it has jurisdiction over the subject matter and the parties to the case. *In re Tuli*, 172 F.3d  
28 707, 712 (9th Cir. 1999).

1 **A. Subject Matter Jurisdiction**

2 Federal courts are courts of limited jurisdiction and are presumptively without jurisdiction.  
3 *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). A federal court may  
4 dismiss an action on its own motion if it finds that it lacks subject matter jurisdiction over the  
5 action. *Fiedler v. Clark*, 714 F.2d 77, 78-79 (9th Cir. 1983); *see also* Fed. R. Civ. P. 12(h)(3) (“If  
6 the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the  
7 action.”).

8 Jurisdiction arises under the DJA, which provides that “any court of the United States,  
9 upon the filing of an appropriate pleading, may declare the rights and other legal relations of any  
10 interested party seeking such declaration[.]” 28 U.S.C. § 2201(a). The Court also has jurisdiction  
11 pursuant to the SPEECH Act, which provides that “[a]ny United States person against whom a  
12 foreign judgment is entered on the basis of the content of any writing, utterance, or other speech  
13 by that person that has been published, may bring an action in district court . . . for a declaration  
14 that the foreign judgment is repugnant to the Constitution or laws of the United States.” 28 U.S.C.  
15 § 4104(a)(1).

16 **B. Personal Jurisdiction**

17 To enter default judgment, the Court must have a basis for the exercise of personal  
18 jurisdiction over the defendants in default. *In re Tuli*, 172 F.3d at 712; *see also King v. Russell*,  
19 963 F.2d 1301, 1306 (9th Cir. 1992). “Federal courts ordinarily follow state law in determining  
20 the bounds of their jurisdiction over persons.” *Daimler AG v. Bauman*, 134 S. Ct. 746, 753  
21 (2014). “California’s long-arm statute allows the exercise of personal jurisdiction to the full  
22 extent permissible under the U.S. Constitution.” *Id.*; *see* Cal. Civ. Proc. Code § 410.10.

23 Traditional bases for conferring a court with personal jurisdiction include a defendant’s consent to  
24 jurisdiction, personal service of the defendant within the forum state, or a defendant’s citizenship  
25 or domicile in the forum state. *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 880-81 (2011).

26 The “‘minimum contacts’ analysis looks to the defendant’s contacts with the forum State  
27 itself, not the defendant’s contacts with persons who reside there.” *Walden v. Fiore*, 134 S. Ct.  
28 1115, 1122 (2014). To that end, “the plaintiff cannot be the only link between the defendant and

1 the forum. Rather, it is the defendant’s conduct that must form the necessary connection with the  
2 forum State that is the basis for its jurisdiction over him.” *Id.*

3 EFF argues the Court has specific personal jurisdiction over GEMSA because (1) “[i]t sent  
4 two letters to EFF’s San Francisco offices, first threatening to sue and then threatening additional  
5 actions if EFF did not make a six-figure “damages” payment”; (2) “[i]t filed suit in Australia and  
6 successfully obtained an order that requires EFF to take actions in California to remove content  
7 from its website”; and (3) “it purported to serve the Injunction on EFF in San Francisco.” Mot. at  
8 7; *see* Compl. ¶¶ 8(a)-(d). EFF alleges GEMSA is an Australian corporation. Compl. ¶ 5. There  
9 are no allegations that GEMSA has had other contacts with the state of California beyond its  
10 conduct directed toward EFF. *See* Mot. The undersigned ordered EFF to address whether  
11 GEMSA has sufficient contacts with California as required by *Walden* to confer personal  
12 jurisdiction over it. Order at 1-2, Dkt. No. 17. EFF’s supplemental brief confirms GEMSA does  
13 not. *See* Suppl. Br. at 1-3, Dkt. No. 22.

14 EFF argues “GEMSA reached out to California, communicated with people in California,  
15 and conducted activities within and affecting California. . . . with the express goal of forcing EFF  
16 to suffer harm and take action in California that would enhance GEMSA’s competitive standing  
17 vis-à-vis California-based companies.” *Id.* at 1. EFF again points to the same allegations in the  
18 Complaint, namely, that GEMSA:

- 19
- 20 • Emailed EFF in California and threatened to file suit against  
EFF if it did not act in California to take down the Article and  
pay GEMSA unspecified “damages”;
  - 21 • Obtained a court injunction that requires EFF to act in California  
to take down the Article and to refrain from engaging in any  
22 speech whatsoever about GEMSA’s “intellectual property”  
(speech that would be disseminated from California);
  - 23 • Engaged an agent to physically present EFF with a copy of the  
injunction in California;
  - 24 • Mailed a letter to EFF in California enclosing a copy of the  
injunction, threatening to enforce it, demanding that EFF take  
25 down the Article and pay GEMSA \$750,000, and alluding to  
potential efforts to seek the deindexing of the Article (efforts  
26 that would require GEMSA to reach out to California-based  
search engines).
- 27

28 *Id.* at 2 (citing Compl. ¶¶ 8, 19-34). EFF contends “[t]hese contacts between GEMSA and

1 California well suffice to establish personal jurisdiction of this Court over GEMSA.” *Id.* EFF  
2 mischaracterizes the nature of GEMSA’s contacts: they are not between GEMSA and California  
3 but rather between GEMSA and EFF.

4 EFF further argues the *Walden* “Court emphasized that . . . a defendant’s ‘transactions or  
5 interactions with the plaintiff or other[s]’ from the forum are jurisdictionally relevant where they  
6 are, as here, ‘intertwined with’ the defendant’s contacts with the forum State itself because they  
7 are aimed at procuring actions in the forum state.” Suppl. Br. at 2 (quoting *Walden*, 134 S. Ct. at  
8 1123) (edits in original). EFF misstates the *Walden* analysis. While the Supreme Court  
9 recognized that “a defendant’s contacts with the forum State may be intertwined with his  
10 transactions or interactions with the plaintiff or other parties[,]” it held that

11 a defendant’s relationship with a plaintiff or third party, standing  
12 alone, is an insufficient basis for jurisdiction. [] Due process  
13 requires that a defendant be haled into court in a forum State based  
14 on his own affiliation with the State, not based on the ‘random,  
fortuitous, or attenuated’ contacts he makes by interacting with other  
persons affiliated with the State.

15 *Walden*, 134 S. Ct. at 1123. Without more, the mere fact that GEMSA reached out to EFF, which  
16 happens to reside in California, does not create sufficient minimum contacts with the State of  
17 California itself.

18 EFF argues “GEMSA obtained the injunction as part of a course of conduct explicitly  
19 aimed at suppressing a Californian’s speech about litigation involving California companies such  
20 as Airbnb that is of interest to readers in the Northern District and throughout California.” Suppl.  
21 Br. at 3; *see* Compl., Ex. 5 (“In the past year, GEMSA has sued dozens of companies, ranging  
22 from Airbnb to Zillow.”). EFF contends “this Court has held that this kind of purposeful direction  
23 at the forum suffices to establish personal jurisdiction.” Suppl. Br. at 3 (citing *Mountz, Inc. v. Ne.*  
24 *Indus. Bolting & Torque, LLC*, 2016 WL 6699295, at \*3 (N.D. Cal. Sept. 30, 2016), *report and*  
25 *recommendation adopted*, 2016 WL 6679548 (N.D. Cal. Nov. 14, 2016); *United Tactical Sys.*  
26 *LLC v. Real Action Paintball, Inc.*, 108 F. Supp. 3d 733, 739 (N.D. Cal. 2015)). EFF’s reliance on  
27 these cases is misplaced. Unlike GEMSA, the defendants in *Mountz* and *United Tactical Systems*  
28 purposefully directed their activities to California residents, not just the plaintiffs. *See Mountz,*

1 2016 WL 6699295, at \*4 (where plaintiff alleged, among other things, “[d]efendant sells to the  
2 general public, including to consumers who reside in the State of California and the Northern  
3 District of California” and finding plaintiff established the “[d]efendant ha[d] specifically targeted  
4 customers in California, including [p]laintiff’s customers in California”); *United Tactical Sys.*, 108  
5 F. Supp. 3d at 748 (finding act of signing settlement agreement that required financial transactions  
6 within California and which “may impact California’s market for irritant projectiles as well as [the  
7 plaintiff’s] business” showed defendant “expressly aimed its intentional act at California”). The  
8 finding of personal jurisdiction in those cases therefore comports with the *Walden* analysis that the  
9 defendant must have its own affiliation with the state. *See Walden*, 134 S. Ct. at 1123. Again,  
10 EFF’s Complaint and Supplemental Brief show that GEMSA directed its communications  
11 exclusively toward EFF, not California. There are no facts that GEMSA has reached out to  
12 California persons or entities other than EFF. Moreover, GEMSA’s injunction targets only EFF; it  
13 does not mention other California residents. *See Australian Inj.* In other words, it is only EFF’s  
14 speech that GEMSA ostensibly seeks to suppress. That an EFF staff attorney mentioned  
15 California companies in the Article does not, in and of itself, show GEMSA has purposefully  
16 directed its activities toward California residents other than EFF.

17 In a footnote, EFF offers evidence that GEMSA is actively litigating three lawsuits in the  
18 Northern District of California. *See* Suppl. Br. at 2 n.1 (citing *Global Equity Mgmt. (SA) Pty. Ltd.*  
19 *v. Alibaba.com, Inc.*, Case No. 17-cv-2177-WHA; *Global Equity Mgmt. (SA) Pty. Ltd. v. eBay,*  
20 *Inc.*, Case No. 17-cv-2178-WHA; *Global Equity Mgmt. (SA) Pty. Ltd. v. Alibaba Grp. Holding,*  
21 *Ltd.*, Case No. 17-cv-2435-WHA). EFF does not explain why GEMSA’s prosecution of these  
22 lawsuits confers personal jurisdiction over GEMSA. In each of these cases, GEMSA filed its  
23 complaints in the Eastern District of Texas, and the cases were subsequently transferred to the  
24 Northern District of California. *See* -2177 Dkt. No. 73; -2178 Dkt. No. 50; -2435 Dkt. No. 44. In  
25 a pre-*Walden* case, the Ninth Circuit acknowledged that “personal jurisdiction exists where a  
26 defendant . . . independently seeks affirmative relief in a separate action before the same court  
27 concerning the same transaction or occurrence.” *Dow Chem. Co. v. Calderon*, 422 F.3d 827, 834  
28 (9th Cir. 2005) (emphasis omitted). But GEMSA did not independently seek relief in the Northern

1 District of California; rather, it sought relief in Texas and opposed the transfer of those cases to  
 2 this Court. *See* -2177 Dkt. No. 30; -2178 Dkt. No. 13; -2435 Dkt. No. 17 (GEMSA’s oppositions  
 3 to motions to transfer). EFF offers no basis to find that the opposed transfer of a lawsuit from one  
 4 forum to another confers jurisdiction in the transferee court, nor does EFF address whether the  
 5 relief sought in the aforementioned actions concerns the same transaction or occurrence as the one  
 6 at issue here.

7 In sum, GEMSA’s contacts with California are limited to its interactions with EFF; there is  
 8 nothing in the record that suggests GEMSA has sufficient minimum contacts with California  
 9 itself. EFF therefore fails to show that the Court may exercise personal jurisdiction over GEMSA  
 10 without offending notions of due process. For this reason, the undersigned **RECOMMENDS** the  
 11 District Judge **DENY** EFF’s Motion for Default Judgment.

12 **C. Service of Process**

13 Additionally, the Court must “assess the adequacy of the service of process on the party  
 14 against whom default is requested.” *Bank of the W. v. RMA Lumber Inc.*, 2008 WL 2474650, at  
 15 \*2 (N.D. Cal. June 17, 2008). “Without a proper basis for jurisdiction, or in the absence of proper  
 16 service of process, the district court has no power to render any judgment against the defendant’s  
 17 person or property unless the defendant has consented to jurisdiction or waived the lack of  
 18 process.” *S.E.C. v. Ross*, 504 F.3d 1130, 1138-39 (9th Cir. 2007).

19 Federal Rule of Civil Procedure 4(h)(2) authorizes service of process on an entity “at a  
 20 place not within any judicial district of the United States, in any manner prescribed by Rule 4(f)  
 21 for serving an individual, except personal delivery under (f)(2)(C)(i).” Rule 4(f)(1) provides that  
 22 “an individual . . . may be served at a place not within any judicial district of the United States . . .  
 23 by any internationally agreed means of service that is reasonably calculated to give notice, such as  
 24 those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial  
 25 Documents[.]”

26 GEMSA is a privately held Australian corporation. Compl. ¶ 5. On May 2, 2017, EFF  
 27 caused to be served on GEMSA a copy of the Complaint, summons, and other documents at  
 28 GEMSA’s registered address at United Accountant Group Pty Ltd., 458 Morphet Road,

1 Warradale, Southern Australia 5046. Aff. of Service ¶¶ 2-4, Dkt. No. 8; Am. Aff. of Service ¶¶  
 2 2-3, 5, Dkt. No. 12. Process server Keith William Bruce-Gordon met with “Mobin,” an  
 3 accountant for United Accountant Group, gave Mobin the documents, and informed him that he  
 4 was being served with legal process on behalf of GEMSA. Aff. of Service ¶ 4; Am. Aff. of  
 5 Service ¶ 6. Mobin refused to accept service on GEMSA’s behalf. *Id.* (both). Mr. Bruce-Gordon  
 6 “laid the above-referenced documents on the counter at reception and advised Mobin that he was  
 7 being served with legal process on behalf of [GEMSA].” *Id.* (both).

8 The United States and Australia are parties to the Hague Convention on the Service  
 9 Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.<sup>2</sup> *See* Hague  
 10 Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or  
 11 Commercial Matters, Nov. 15, 1965, T.I.A.S. No. 6638, 658 U.N.T.S. 163 (“Hague Convention”).  
 12 Article 15 of the Hague Convention provides that

13 [w]here a writ of summons or an equivalent document had to be  
 14 transmitted abroad for the purpose of service, under the provisions  
 15 of the present Convention, and the defendant has not appeared,  
 judgment shall not be given until it is established that -

- 16 a) the document was served by a method prescribed by the  
 17 internal law of the State addressed for the service of  
 18 documents in domestic actions upon persons who are within  
 its territory, or  
 19 b) the document was actually delivered to the defendant or  
 to his residence by another method provided for by this  
 Convention,

and that in either of these cases the service or the delivery was  
 effected in sufficient time to enable the defendant to defend.

20 Hague Convention art. XV. Australian law permits a company to be served by, among other  
 21 things, “leaving [the document] at, or posting it to, the company’s registered office[.]”  
 22 *Corporations Act of 2001* ch. 1, pt. 1.2, div. 8, sub-div. 109X (Austl.). EFF offers evidence that a  
 23 search of the Australian Securities & Investments Commission (“ASIC”) records shows that  
 24 GEMSA’s registered office is indeed located at United Accountants. Am. Aff. of Service, Ex. A  
 25 (ASIC Organisational Search for Global Equity Management (SA) Pty Ltd); Svilans Decl., Ex. A

26 \_\_\_\_\_  
 27 <sup>2</sup> HCCH, Status Table - 14: Convention of 15 November 1965 on the Service Abroad of Judicial  
 28 and Extrajudicial Documents in Civil or Commercial Matters,  
<https://www.hcch.net/en/instruments/conventions/status-table/?cid=17> (last visited Sept. 19,  
 2017).

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Northern District of California

1 (same), Dkt. No. 22-1. That Mobin refused service does not render service ineffective under the  
2 Corporations Act, so long as the documents were delivered to GEMSA’s registered office. *See*,  
3 *e.g.*, *Gusdote Pty Ltd v Ashley*, 193 FCR 227 ¶ 50 (where documents were properly addressed and  
4 posted to the corporation’s registered office, “by the operation of . . . s 109X of the [Corporations]  
5 Act, unless the contrary intention appears, service is deemed to have been effected. That is to say,  
6 delivery to the registered office is deemed to have been effected.”). GEMSA was properly served.

7 **CONCLUSION**

8 Based on the above analysis, GEMSA lacks sufficient contacts with California to allow  
9 this Court to exercise personal jurisdiction over GEMSA. The undersigned therefore  
10 **RECOMMENDS** the District Court **DENY** EFF’s Motion for Default Judgment and issue an  
11 order to show cause why the action should not be dismissed based on lack of personal jurisdiction  
12 over GEMSA.

13 EFF shall serve a copy of this Report and Recommendation upon GEMSA. Pursuant to 28  
14 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b)(2), a party may serve and file any  
15 objections within 14 days after being served.

16 **IT IS SO RECOMMENDED.**

17  
18 Dated: September 20, 2017

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21 MARIA-ELENA JAMES  
22 United States Magistrate Judge  
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