

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

DISH NETWORK L.L.C, AEP
Plaintiff,

v.

Case No. 8:25-cv-02846-CEH-AEP

ARTISTRY GROUP LLC d/b/a 1 Dollar,
IPTV, KEMO E MARKETING SDN.
BHD., NOORHAYATI BINTI ABDUL
RAHIM, and AMMAR TOWIR,
Defendants.

**DEFENDANT AMMAR TOWIR’S MOTION TO SET ASIDE CLERK’S ENTRY
OF DEFAULT**

Defendant, AMMAR TOWIR (hereafter “Defendant” or "Mr. Towir"), by and through undersigned counsel, and pursuant to Federal Rule of Civil Procedure 55(c), respectfully moves this Court to set aside the Clerk's Entry of Default entered on March 11, 2026 (ECF No. 34). Good cause exists because Plaintiff has not established proper service of process on Mr. Towir, and, alternatively, because good cause exists to set aside the default. Mr. Towir did not willfully fail to respond to Plaintiff's Complaint, Plaintiff will not suffer prejudice, and Mr. Towir possesses substantial defenses to Plaintiff's claims. Accordingly, the Clerk's Entry of Default should be set aside, and Mr. Towir should be permitted to defend this action on the merits.

INTRODUCTION

This Motion presents a threshold question: whether Plaintiff may obtain and

maintain a Clerk's Entry of Default against a foreign defendant without first establishing that he was properly served and is subject to this Court's jurisdiction. Plaintiff has done neither. Plaintiff has not established that Mr. Towir resides in Malaysia (he does not) or that service complied with Federal Rule of Civil Procedure 4 (or the applicable international service requirements), or that he has any factual connection to the alleged infringement or the remaining defendants. Accordingly, the Clerk's Entry of Default should be vacated.

Alternatively, even if the Court concludes that Plaintiff has made a sufficient showing of service, good cause exists to set aside the default under Rule 55(c). Mr. Towir did not intentionally disregard these proceedings. A criminal complaint was filed in Dubai against Mr. Towir related to the causes of actions in the complaint at issue. Believing in good faith that the investigation in Dubai would inform his response to the allegations Mr. Towir attempted to wait for the completion the criminal investigation that was to have taken only thirty (30) days. Mr. Towir has fully cooperated in this criminal investigation having turned over his phone and laptop to the Dubai officials and voluntarily answering questions on two separate occasions. Ultimately, Mr. Towir mistakenly believed he should await completion of the investigation before determining how to proceed in this action.

Mr. Towir does not know who initially filed the Dubai complaint. At the time, however, he believed in good faith that Plaintiff and its partners were responsible because of the substantial overlap between the allegations being investigated in Dubai and those asserted by Plaintiff here. He later learned that the initiating entities included DISH's

streaming partners. That change in understanding does not alter the relevant point: Mr. Towir's actions in corporation with the Dubai law enforcement reflect an effort to address the allegations through appropriate legal channels - not a willful disregard of this Court's authority.

Because Plaintiff has not established proper service and, in any event, the Rule 55(c) factors overwhelmingly favor relief, the Clerk's Entry of Default should be vacated and this case permitted to proceed on the merits.

FACTUAL BACKGROUND

1. Plaintiff, DISH NETWORK L.L.C. ("Plaintiff" or "DISH"), filed this action alleging copyright infringement arising from the operation of streaming services identified as Kemo IPTV and Lemo TV. (ECF No. 1).

2. Mr. Towir does operate an independent online reselling business. He purchases products from a wholesaler and resells them online to individuals who seek to purchase those products. Those transactions are independent of Kemo IPTV and Lemo TV. He disputes that Plaintiff has evidence showing that he engaged in, directed, authorized, or participated in any alleged infringement in the United States. *See* a true and correct copy of Mr. Towir's Declaration in support of the Motion attached as **Exhibit A**.

3. Plaintiff attempted to serve Mr. Towir by sending documents to an address in Malaysia. (ECF Nos. 15 and 28). Mr. Towir does not reside in Malaysia and was not present in Malaysia when this action was filed or when Plaintiff allegedly attempted service. *See* **Exhibit A**.

4. Mr. Towir has never operated the alleged business from Malaysia for the service of any entity or customer located in the United States nor has Mr. Tower offered any reselling services from Malaysia to any entity or customer located in the United States. Plaintiff has not produced evidence establishing that the address used for service was Mr. Towir's residence or that service complied with Rule 4. *See **Exhibit A***.

5. Plaintiff's attempted service is particularly significant because Mr. Towir informed DISH during settlement discussions that he did not reside in Malaysia. *See **Exhibit A***. Nevertheless, Plaintiff proceeded to attempt service at a Malaysian address without establishing that the address was Mr. Towir's residence or that the documents were delivered to him.

6. After no response was filed, Plaintiff requested a Clerk's Entry of Default on March 10, 2026. (ECF No. 32). The Clerk entered default on March 11, 2026, and Plaintiff subsequently moved for default judgment. (ECF No. 34).

7. Around the same period, Mr. Towir was subject to a criminal complaint and investigation in Dubai, where he resided at the time. The allegations under investigation substantially overlapped with the allegations asserted by Plaintiff in this action. *See **Exhibit A***.

8. Mr. Towir sought legal advice in Dubai concerning the investigation and cooperated fully with the authorities, including appearing for multiple interviews after being requested to answer supplemental questions and to turn over his smart phone and computing devices. *See **Exhibit A***.

9. Authorities advised him that the investigation was substantially complete and that the matter would soon be referred to the Dubai Public Prosecution to determine whether formal charges would be made and also at which point the investigative report would become available. *See **Exhibit A***.

10. Mr. Towir does not know who initially filed the Dubai complaint. Until August 31, 2026, however, he believed in good faith that DISH and its streaming-service partners had initiated the investigation because of the nature of the allegations and the substantial overlap between the matters being investigated in Dubai and the allegations asserted in this action. Mr. Towir subsequently learned that the initiating entities included Apple Video Programming LLC, Warner Bros. Entertainment Inc., Paramount Pictures Corp., Columbia Pictures Industries Inc., Disney Enterprises Inc., Netflix US LLC, and Amazon Content Services LLC. *See **Exhibit A***.

11. Based on the nature of the investigation and the advice he received, Mr. Towir believed that the investigative report would materially affect his response to the allegations and mistakenly believed he should await its completion before determining how to proceed in the instant litigation. *See **Exhibit A***.

12. The investigation remains pending. Mr. Towir has been requested to appear before the Dubai Public Prosecution on September 7, 2026, to answer additional questions. *See **Exhibit A***. He has not yet received the investigative report and therefore does not know the full contents of the pending investigation. *Id.*

13. Interestingly enough, just as the travel ban instituted by Dubai officials that

occurs when a criminal investigation is in progress was about to expire, another, related criminal complaint was filed against Mr. Towir in Dubai, resetting the travel ban. *See Exhibit A*.

14. Mr. Towir never intended to disregard this Court's authority or ignore Plaintiff's lawsuit. *See Exhibit A*. He respectfully seeks an opportunity to defend himself against Plaintiff's claims on the merits.

ARGUMENT

I. LEGAL STANDARD

Federal Rule of Civil Procedure 55(c) provides that "the court may set aside an entry of default for good cause shown." Fed. R. Civ. P. 55(c). "Service of process is a jurisdictional requirement: a court lacks jurisdiction over the person of a defendant when that defendant has not been served." *Pardazi v. Cullman Med. Ctr.*, 896 F.2d 1313, 1317 (11th Cir. 1990). When the sufficiency of service is challenged, the plaintiff bears the burden of establishing that service was valid. *Martin v. Salvatierra*, 233 F.R.D. 630, 631 (S.D. Fla. 2005); *Fitzpatrick v. Bank of N.Y. Mellon*, 580 F. App'x 690, 694 (11th Cir. 2014). Absent proper service, a clerk's entry of default cannot stand.

Moreover, the good cause standard is "a mutable and liberal standard, varying from situation to situation depending on the facts of a given case." *See Tropical Paradise Resorts, LLC v. JBShbm, LLC*, 343 F.R.D. 443, 448 (S.D. Fla. 2023). Importantly, the good cause standard utilized in setting aside an entry of a clerk's default is less rigorous than the required showing to set aside a default judgment. *Id.* The Eleventh Circuit

maintains a "strong policy of determining cases on their merits," and courts disfavor defaults. *Id.* (internal citation omitted).

In considering whether to set aside a clerk's entry of default, courts evaluate whether (1) the default was culpable or willful, (2) setting it aside would prejudice the adversary, and (3) the defaulting party presents a meritorious defense. *Id.* Courts further consider whether the defaulting party acted promptly to correct the default. *Compania Interamericana Export-Import, S.A. v. Compania Dominicana de Aviacion*, 88 F.3d 948, 951 (11th Cir. 1996). No single factor is dispositive, and courts are guided by the Eleventh Circuit's strong policy favoring the resolution of cases on their merits. *Tropical Paradise Resorts*, 343 F.R.D. at 448.

II. THE CLERK'S ENTRY OF DEFAULT SHOULD BE VACATED BECAUSE PLAINTIFF HAS NOT ESTABLISHED PROPER SERVICE

A clerk's entry of default cannot stand unless the plaintiff first establishes that the defendant was properly served in accordance with Federal Rule of Civil Procedure 4. Service of process is a prerequisite to the Court's exercise of personal jurisdiction, and Plaintiff bears the burden of establishing the validity of service once challenged. *Pardazi*, 896 F.2d at 1317; *Martin*, 233 F.R.D. at 631; *Fitzpatrick*, 580 F. App'x at 694 ("Where a defendant challenges service of process, the plaintiff bears the burden of establishing its validity."). Because Plaintiff has not carried that burden, the Clerk's Entry of Default must be vacated.

According to the docket, Plaintiff purported to serve Mr. Towir by sending the

summons and complaint to an address in Kuala Lumpur, Malaysia. (ECF Nos. 15 and 28). Mr. Towir has submitted a sworn declaration stating that he does not reside in Malaysia, did not reside in Malaysia at the time service was attempted, has not operated the alleged business from Malaysia with service to the United States, and does not understand why Plaintiff attempted service at that address, especially since it appears Plaintiff knew he was in Dubai. *See* **Exhibit A**.

Furthermore, Plaintiff has produced no evidence establishing that the Malaysian address was Mr. Towir's dwelling or usual place of abode, that it was otherwise a proper location for service, or that the method employed complied with Rule 4(f) and the applicable requirements governing service on individuals in foreign countries. These deficiencies are not merely technical. Rule 4 permits service abroad only through specified methods, including internationally agreed means such as those authorized by the Hague Service Convention, or other methods authorized by the foreign country's law and not prohibited by international agreement. *See* Fed. R. Civ. P. 4 (f). The proof of service filed by Plaintiff shows only that documents were mailed to, and delivered at, a Malaysian address; it does not establish that the address belonged to Mr. Towir, that he was located there, or that service was otherwise effected in compliance with Rule 4(f). (ECF Nos. 15 & 28). These deficiencies are significant because Plaintiff's own service papers rest on the premise that Mr. Towir was a resident of Malaysia, which Mr. Towir disputes.

Moreover, Plaintiff was informed during settlement discussions that Mr. Towir did not reside in Malaysia. *See* **Exhibit A**. Plaintiff, nevertheless, never corrected its error and

proceeded to rely upon service directed to a Malaysian address.

Plaintiff's jurisdictional showing is also subject to substantial question in light of the Northern District of California's recent decision in *Dish Network L.L.C. v. Inntera PC*, 2026 U.S. Dist. LEXIS 46025 (N.D. Cal. Mar. 5, 2026). There, the Northern District of California dismissed Plaintiff's claims against foreign defendants under Rule 12(b)(2) after concluding that DISH had failed to establish a sufficient basis for the exercise of personal jurisdiction. Although *Inntera PC* is not binding on this Court, it is persuasive because it involved the same plaintiff and emphasized that Plaintiff, as the party invoking the Court's jurisdiction, bears the burden of establishing a sufficient jurisdictional basis before requiring foreign defendants to litigate in the United States. Though a different federal court, the same principle applies here. Before Plaintiff may obtain the extraordinary relief of a default, it must first demonstrate that Mr. Towir was properly served and is properly subject to this Court's jurisdiction. Plaintiff has failed to make that showing.

The circumstances here warrant particular caution before allowing a default to stand. Because Plaintiff has failed to establish proper service, the Court lacks personal jurisdiction over Mr. Towir, and the Clerk's Entry of Default cannot stand. The appropriate remedy is to vacate the default and require Plaintiff to effect service in compliance with Rule 4 before seeking any further relief against Mr. Towir. *See Pardazi*, 896 F.2d at 1317. The Court should, therefore, vacate the default and require Plaintiff to effect service in compliance with Rule 4 before seeking further relief against Mr. Towir. Alternatively, if the Court concludes that Plaintiff has made a sufficient preliminary showing of service, the

substantial questions surrounding service and personal jurisdiction weigh heavily in favor of setting aside the default so that those threshold issues may be resolved on a complete factual record.

III. ALTERNATIVELY, GOOD CAUSE EXISTS UNDER RULE 55(C) BECAUSE MR. TOWIR'S FAILURE TO RESPOND WAS NOT WILLFUL

"[A] party willfully defaults by displaying either an intentional or reckless disregard for the judicial proceedings." *S.E.C. v. Johnson*, 436 F. App'x 939, 945 (11th Cir. 2011). Conversely, defaults resulting from mistake, misunderstanding, confusion regarding procedural obligations, or reliance on mistaken legal advice generally constitute excusable neglect rather than willful conduct. *See, e.g., Lopez v. Colonial Grp. of Am. Corp.*, 2013 U.S. Dist. LEXIS 52978, 2013 WL 1503260, at *2 (S.D. Fla. Apr. 12, 2013) (determining that delay was neither willful nor culpable where defendant moved to vacate sixteen days after entry due to mistaken litigation strategy).

Mr. Towir's conduct demonstrates precisely that type of excusable neglect. Mr. Towir's failure to respond was not the product of intentional or reckless disregard for these proceedings. Criminal actions were brought against Mr. Towir in Dubai regarding the same causes of actions brought in the instant suit. He cooperated fully with that investigation, including appearing before Dubai Police to answer supplemental questions, and remained in communication with local counsel regarding the status of the investigation and the anticipated release of the investigative report. Mr. Towir understood that the report would need to be completed and made available through the Dubai Public Prosecution system

before he and his counsel could review the findings and determine the appropriate response. Based on that understanding and the advice he received from Dubai counsel, he mistakenly believed that awaiting the completion of that process was appropriate. *See **Exhibit A***.

Importantly, Mr. Towir originally did not know who initiated the Dubai investigation; however, based on the timing of the investigation, the nature of the allegations being examined, and the overlap between those allegations and the claims asserted by Plaintiff, Mr. Towir believed in good faith that the investigation was related to Plaintiff's allegations in this action. On August 31, 2026, Mr. Towir learned that the initiating entities reflected DISH's streaming partners. *See **Exhibit A***. The fact that his understanding of the investigation's origins was ultimately incomplete does not transform his conduct into willful disregard of this Court's proceedings.

Nor was Mr. Towir attempting to evade Plaintiff. He attempted in good faith to negotiate a settlement with DISH, and DISH was informed during those discussions that Mr. Towir did not reside in Malaysia and did not render services to the United States. *See **Exhibit A***. His conduct reflects engagement with the underlying dispute - not an actual intent to ignore it.

Finally, Mr. Towir's conduct in connection with the Dubai investigation was not passive. He repeatedly appeared when requested, answered questions, provided information, and surrendered his electronic devices. He continues to cooperate with the process and is scheduled to appear before the Dubai Public Prosecution on September 7,

2026, when he will learn more about the underlying criminal prosecution. *See* **Exhibit A**. These actions reflect an effort to address the allegations through legal channels - not an intentional decision to disregard this Court's authority or ignore the litigation.

Accordingly, Mr. Towir's failure to respond resulted from a good-faith misunderstanding concerning how the pending Dubai proceedings would inform his response, not from willful disregard of this Court or Plaintiff's lawsuit. This factor weighs strongly in favor of setting aside the default.

IV. PLAINTIFF WILL NOT BE PREJUDICED BY SETTING ASIDE THE DEFAULT

The relevant prejudice under Rule 55(c) is not the ordinary burden of litigating a case on the merits. "The prejudice to be considered by the Court is the effect of setting aside the default, if any, on the Plaintiff's ability to prosecute the case on the merits." *Jones v. Fla. Rural Legal Servs, Ins.*, 2026 U.S. Dist LEXIS 43872 *1, *2-*3 (M.D. Fla. 2026) (citing *Sobkowski v. Wyeth, Inc.*, No. 5:04 CV 96-OC-10GRJ, 2004 WL 3569703 *1, *2 (M.D. Fla. June 4, 2004)). Thus, prejudice exists only where setting aside the default would impair the plaintiff's ability to prosecute the action through the loss of evidence, unavailable witnesses, or similar circumstances. *Id.*

No such prejudice exists here. This case remains in its earliest stages, and Plaintiff has not identified any harm that would impair its ability to prosecute its claims on the merits. No discovery has occurred, no scheduling deadlines have been disrupted, and no trial date has been set. Moreover, the time between the entry of default and Mr. Towir's

request for relief has not resulted in any loss of evidence, unavailability of witnesses, or other circumstances that would prevent Plaintiff from pursuing its claims. Indeed, Plaintiff's only asserted prejudice would be the need to litigate this matter on the merits - a burden Plaintiff would bear regardless of whether default had been entered. Such circumstances do not constitute legally cognizable prejudice under Rule 55(c). Setting aside the default will not deprive Plaintiff of any substantive right or evidentiary advantage; it will merely permit the parties to address the merits of Plaintiff's claims through the ordinary litigation process.

Accordingly, the second Rule 55(c) factor likewise favors vacating the default.

V. MR. TOWIR POSSESSES MERITORIOUS DEFENSES

To establish a meritorious defense under Rule 55(c), a defendant need only demonstrate that the “allegations of defendant’s answer, if established at trial, would constitute a complete defense to the action.” *Davis v. Oldham*, 2007 U.S. Dist. LEXIS 84956 *1, *14 (M.D. Fla. 2007) (internal citations omitted). Although the defaulting party must assert specific facts supporting the existence of a prima facie meritorious defense, the defaulting party is not required to prove those defenses at this stage. *Id.*

Mr. Towir possesses several substantial defenses that warrant adjudication on the merits.

Among other things, Mr. Towir’s primary defense is that Plaintiff cannot establish that he engaged in any conduct giving rise to liability under the Copyright Act. The Complaint identifies no specific acts undertaken by Mr. Towir and no evidence that he

operated the alleged services in the United States. Although Mr. Towir acknowledges that he purchased products from a wholesaler and resold them online to individuals who sought to purchase them, he expressly states that these transactions were independent of Kemo IPTV and Lemo TV. Mr. Towir, therefore, disputes that his legitimate reselling activity establishes any connection to the alleged streaming services or the alleged infringement.

Then, as discussed in detail above, Mr. Towir disputes that he was properly served and disputes the factual premise underlying Plaintiff's attempted service *i.e.*, he did not reside in Malaysia at the time of service and never rendered services to the United States from Malaysia. See **Exhibit A**. He likewise has never operated the alleged business from Dubai or the UAE or used the UAE as a location from which to conduct the business activities alleged by Plaintiff.

Mr. Towir also intends to challenge Plaintiff's claims to the extent they rely upon extraterritorial conduct, personal jurisdiction, and Plaintiff's ability to establish each element necessary to impose liability under the Copyright Act based solely on unsupported allegations. These defenses present genuine factual and legal disputes that, if established, would defeat all or part of Plaintiff's claims.

These are not conclusory denials. They are specific factual disputes concerning whether Mr. Towir engaged in the conduct alleged, where he conducted the alleged business activities, and whether Plaintiff can establish the jurisdictional prerequisites necessary to proceed against him. If established, these defenses would defeat Plaintiff's claims against Mr. Towir or materially limit the relief available to Plaintiff.

Accordingly, Mr. Towir has presented meritorious defenses sufficient to satisfy Rule 55(c).

VI. EQUITIES FAVOR VACATUR

All of the relevant considerations support relief under Rule 55(c). Mr. Towir has asserted substantial defenses against Plaintiff's claims, and setting aside the default will not prejudice Plaintiff in any meaningful way. Courts have repeatedly emphasized the strong preference for resolving cases on the merits rather than by default. *See, generally, Tropical Paradise Resorts, LLC*, 343 F.R.D. at 443. This policy reflects fundamental principles of fairness and the recognition that justice is best served when disputes are decided based on the substantive legal and factual issues, not on procedural missteps.

Conversely, allowing the default to stand would deprive Mr. Towir of the opportunity to defend himself against claims seeking significant statutory damages and injunctive relief based solely on a procedural misstep. Consistent with the Eleventh Circuit's strong preference for resolving disputes on their merits, this Court should exercise its discretion to vacate the Clerk's Entry of Default.

VII. CONCLUSION

For the foregoing reasons, Defendant, AMMAR TOWIR, respectfully requests that this Court:

1. Grant this Motion and set aside the Clerk's entry of default entered on March 11, 2026;
2. Deny Plaintiff's pending Motion for Default Judgment without prejudice or,

in the alternative, defer ruling on that motion pending resolution of this Motion;

3. Permit Defendant to file his answer or other responsive pleading within thirty (30) days of the Court's Order granting this Motion; and

4. Grant such other and further relief as this Court deems just and proper.

CERTIFICATE OF GOOD FAITH CONFERENCE

Pursuant to Local Rule 3.01(g), undersigned counsel certifies that counsel conferred with counsel for Plaintiff in a good-faith effort to resolve the issues raised in this Motion and a resolution could not be reached.

DATED this 3rd day of September, 2026

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***Attorneys for Defendant Ammar
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 3, 2026, a true and correct copy of this

document was electronically filed via CM/ECF, which will electronically serve all counsel of record.

/s/ **Terry Sanks**
Terry M. Sanks, Esq.