

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA

**Budget Truck Rental LLC, Budget Rent A Car System, Inc., and
ACE American Insurance Company v. Jacci Simon, Heaven Simon,
and Timmothis Culverson**

Simon · No. 2:24-cv-01648-CDS-EJY · Decided December 30, 2025

OPINION

Simon

PER CURIAM.

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2 UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

3 4 Budget Truck Rental LLC, et al., Case No. 2:24-cv-01648-CDS-EJY 5 Plaintiff Order
Granting the Plaintiffs’ Motion for Default Judgment 6 v. 7 Jacci Simon, et al., [ECF No. 17] 8
Defendants 9 10 Plaintiffs Budget Truck Rental LLC, Budget Rent A Car System, Inc., and ACE
American 11 Insurance Company move for default judgment against defendants Jacci Simon,
Heaven Simon, 12 and Timmothis Culverson. Mot., ECF No. 17. Despite being properly served,
the defendants have 13 not appeared in this case nor opposed any motion. Having reviewed the
plaintiffs’ motion, I find 14 they are entitled to default judgment. Accordingly, for the reasons
explained herein, I grant the 15 plaintiffs’ motion and enter a declaratory judgment against Jacci
Simon, Heaven Simon, and 16 Timmothis Culverson. 17 I. Discussion 18 Obtaining a default
judgment under Federal Rule of Civil Procedure 55 is a two-step 19 process. See *Eitel v. McCool*,
782 F.2d 1470, 1471 (9th Cir. 1986) (explaining the process). First, 20 “[w]hen a party against
whom a judgment for affirmative relief is sought has failed to plead or 21 otherwise defend, and
that failure is shown by affidavit or otherwise, the clerk must enter the 22 party’s default.” Fed. R.
Civ. P. 55(a). After default is entered, a party may seek entry of default 23 judgment under Rule
55(b). 24 Upon entry of default, I take as true the factual allegations in the non-defaulting party’s
25 complaint, except those related to the amount of damages. Fed. R. Civ. P. 8(b)(6); *TeleVideo
Sys., 26 Inc. v. Heidenthal*, 826 F.2d 915, 917–18 (9th Cir. 1987). In the complaint, the plaintiffs
request 1 declaratory relief, as well as an award for all recoverable costs and attorney’s fees.1
Compl., ECF

2 No. 1 at 7. Thus, determination of any amount of damages is unnecessary. Nonetheless, “[e]ntry
3 of default does not entitle the non-defaulting party to a default judgment as a matter of right.” 4
Warner Bros Entm’t, Inc. v. Caridi, 346 F. Supp. 2d 1068, 1071 (C.D. Cal. 2004) (citation
omitted). 5 The “general rule [is] that default judgments are ordinarily disfavored. Cases should be
decided 6 upon their merits whenever reasonably possible.” *Eitel*, 782 F.2d at 1472 (citing *Peno v.*

Seguros La 7 Comercial, S.A., 770 F.2d 811, 814 (9th Cir. 1985)). Whether to grant a default judgment lies within 8 the district court's discretion. Id. 9 The plaintiffs have satisfied the procedural requirements for default judgment as the 10 clerk has entered a default against Jacci Simon, Heaven Simon, and Timmothis Culverson. ECF

11 No. 15. They have also shown the substantive factors outlined in *Eitel v. McCool* weigh in favor of

12 default judgment. ECF No. 17 at 6–9. Specifically, to determine whether default judgment is 13 proper, I must consider the following factors: (1) the possibility of prejudice to the plaintiff; (2) 14 the merits of the plaintiff's substantive claims; (3) the sufficiency of the complaint; (4) the sum 15 of money at stake in the action; (5) the possibility of a dispute concerning material facts; (6) 16 whether the default was due to excusable neglect; and (7) the strong policy underlying the 17 Federal Rules of Civil Procedure favoring decisions on the merits. *Eitel*, 782 F.2d at 1471–72. 18 The first *Eitel* factor considers whether the plaintiffs will suffer prejudice if a default 19 judgment is not entered. The defendants failed to defend against this lawsuit. Therefore, the 20 plaintiffs will suffer prejudice if default judgment is not entered as they will have no other means 21 to litigate their claim or obtain clarification of their rights and obligations. See *PepsiCo, Inc. v. 22 California Sec. Cans*, 238 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002) (“Potential prejudice to Plaintiffs 23 favors granting a default judgment. If Plaintiffs’ motion for default judgment is not granted, 24 25 1Although the plaintiffs seek to recover attorney’s fees and costs in their prayer for relief, they do not seek an award in their motion for default judgment, so I do not address that request in this order. 26 1 Plaintiffs will likely be without other recourse for recovery.”). Thus, this factor weighs in favor 2 of entry of default judgment. 3 The second and third *Eitel* factors favor default judgment when the “plaintiff state[s] a 4 claim on which the plaintiff may recover.” *Danning v. Lavine*, 572 F.2d 1386, 1389 (9th Cir. 1978). 5 The plaintiffs seek declaratory relief. They adequately alleged that the defendants intentionally 6 planned and executed a collision, that these actions squarely violated the Budget Truck Terms 7 and Conditions and the ACE Excess Rental Insurance Policy, therefore I may issue declaratory 8 relief to relieve the plaintiffs of all duties and obligations. See generally ECF Nos. 1, 17. The second 9 and third *Eitel* factors also weigh in favor of entry of default judgment. 10 In assessing the fourth *Eitel* factor, I consider “the amount of money requested in relation 11 to the seriousness of the defendants’ conduct, whether large sums of money are involved, and 12 whether ‘the recovery sought is proportional to the harm caused by [the] defendant’s conduct.’” 13 *Curtis v. Illumination Arts, Inc.*, 33 F. Supp. 3d 1200, 1212 (W.D. Wash. 2014) (quoting *Landstar 14 Ranger, Inc. v. Parth Enters.*, 725 F. Supp. 2d 916, 921 (C.D. Cal. 2010)); *PepsiCo*, 238 F. Supp. 2d at 15 1176. The plaintiffs do not seek any amount of money, but rather seek declaratory judgment 16 affirming that the defendants intentionally planned and staged the collision, and as such, the 17 plaintiffs have no obligation to cover, defend, or pay based on the fraud admitted by Jacci Simon. 18 Other judges in this district have found, and I agree, that “[t]he fourth *Eitel* factor . . . favors 19 entering default judgment [when] there is no

sum of money at stake.” *Ditech Fin. LLC v. Northgate 20 Homeowners Ass’n*, 2018 WL 2943441, at *3 (D. Nev. June 12, 2018); *Bank of Am., N.A. v. Giavanna 21 Homeowners Ass’n*, 2020 WL 3100826, at *3 (D. Nev. June 11, 2020). Thus, this factor also weighs 22 in favor of entry of default judgment. 23 The fifth Eitel factor weighs the possibility of a dispute regarding facts material to the 24 case. *PepsiCo.*, 238 F. Supp. 2d at 1177. “Upon entry of default, all well-pleaded facts in the 25 complaint are taken as true, except those relating to damages.” *Id.* (citation omitted). The 26 defendants have not appeared to rebut any of the plaintiffs’ allegations. The plaintiffs have 1 sufficiently pled facts demonstrating that (1) the defendants staged a collision to collect 2 insurance money; (2) under the rental terms and conditions, certain prohibited uses void all 3 liability protection and insurance products; and (3) under the terms of the insurance policy, 4 fraudulent claims or intentional concealment of material facts, voids the policy. ECF No. 1 at 2– 5 4. The defendants had the opportunity to clarify that they did not intentionally stage and 6 execute a collision but have chosen not to do so. Consequently, there is little likelihood of a 7 dispute regarding whether the defendants’ claims are covered under the Budget Truck Terms 8 and Conditions or the ACE Policy. This fifth factor weighs in favor of entry of default judgment. 9 The sixth Eitel factor considers whether the defendants’ default is due to excusable 10 neglect. *PepsiCo.*, 238 F. Supp. 2d at 1177. No evidence before me suggests that the defendants 11 failed to respond due to excusable neglect. Thus, the sixth Eitel factor also weighs in favor of 12 entry of default judgment. See *United States v. High Country Broad. Co.*, 3 F.3d 1244, 1245 (9th Cir. 13 1993) (per curiam) (holding that it was “perfectly appropriate” for the district court to enter 14 default judgment against a defendant that failed to appear in the action). 15 Finally, the seventh Eitel factor considers the policy favoring a decision on the merits. 16 “Cases should be decided on their merits whenever reasonably possible.” *Eitel*, 782 F.2d at 1472. 17 But the defendants’ failure to respond to the complaint “makes a decision on the merits 18 impractical, if not impossible.” *PepsiCo.*, 238 F. Supp. 2d at 1177. Thus, while this final Eitel factor 19 always weighs against an entry of default judgment, it does not preclude me from entering one. 20 “A decision on the merits is desirable, but under these circumstances, default judgment is 21 warranted.” *Nevada Prop. 1, LLC v. Kiwibank Ltd.*, 2020 WL 5633048, at *2 (D. Nev. Sept. 21, 2020). 22 II. Conclusion 23 IT IS HEREBY ORDERED that plaintiffs’ motion for default judgment [ECF No. 17] is 24 GRANTED. 25 26 1 The Clerk of Court is kindly directed to enter judgment in favor of Budget Truck Rental, 2|| LLC, Budget Rent A Car System, Inc., and ACE American Insurance Company and against defendants Jacci Simon, Heaven Simon, and Timmothis Culverson declaring that, based on the 4] information before it, defendants Jacci Simon, Heaven Simon, and Timmothis Culverson 5|| intentionally planned and staged the subject collision. 6 The court further declares that, by intentionally causing the collision, Jacci Simon 7|| breached the terms of the Budget Terms and Conditions; and accordingly, Budget Truck has no coverage, defense, or payment obligations with respect to the collision. The court further 9|| declares that, by intentionally causing the collision, Jacci Simon breached the terms of the ACE Policy, thus ACE American Insurance

Company has no coverage, defense, or payment 1]|| obligations with respect to the collision. 12
The Clerk of Court is further instructed, after entering judgment accordingly, to close 13]|| this
case. / / / / 14 Dated: December 30, 2025 LL 15 Z 67 — Cristina/D. Silva 16 Uni ed States District
Judge 18 19 20 21 22 23 24 25 26

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