

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

Matthew Todd Griffith v. AZ's Finest Towing LLC, et al.

Griffith · No. CV-24-03092-PHX-DMF · Decided February 17, 2026

OPINION

Griffith

PER CURIAM.

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6 IN THE UNITED STATES DISTRICT COURT

7 FOR THE DISTRICT OF ARIZONA

8 9 Matthew Todd Griffith, No. CV-24-03092-PHX-DMF 10 Plaintiff,

REPORT AND RECOMMENDATION

11 v. 12 AZ's Finest Towing LLC, et al., 13 Defendants. 14

15 TO THE HONORABLE STEPHEN M. MCNAMEE, SENIOR UNITED STATES

16 DISTRICT JUDGE: 17 This matter is before the Court on Plaintiff's Amended Motion for Entry of Default 18 Judgment Against Defendants AZ's Finest Towing, LLC and Alex Phillips (Doc. 54). 19 Plaintiff Mathew Todd Griffith ("Plaintiff" and/or "Griffith") and now dismissed 20 Defendant Flynn Hayes ("Defendant Hayes")¹ consented to a United States Magistrate 21 Judge presiding in this action pursuant to 28 U.S.C. § 636 (Docs. 9, 18). The remaining 22 defendants have not appeared in this matter.² Before appearances and consent of all 23 defendants, there is not full consent for a Magistrate Judge to enter dispositive orders. See 24 Williams v. King, 875 F.3d 500 (9th Cir. 2017). Thus, pursuant to General Order 21-25, 25 1 See Doc 53. 26 2 The non-dismissed defendants are AZ's Finest Towing, LLC ("Defendant AZ's Finest") 27 and Alex Phillips ("Defendant Phillips") because Plaintiff filed a voluntary notice of dismissal as to "Defendant Luxor Towing and Recovery LLC only, without prejudice, with 28 each party to bear their own attorney's fees and costs" (Doc. 43). 1 this Report and Recommendation is made to Senior United States District Judge Stephen 2 M. McNamee.

3 I. PERTINENT PROCEDURAL HISTORY AND POSTURE

4 Plaintiff filed the Complaint initiating this matter on November 7, 2024 (Doc. 1). 5 Service of the Summons and Complaint on Defendant Phillips was accomplished 6 by service of a co-resident at Defendant Phillips' home on November 20, 2024 (Doc. 11). 7 Service of the Summons and Complaint on Defendant AZ's Finest appears to have been 8 accomplished in January 2025 pursuant to A.R.S. § 29-3119(B) by mailing copies both by 9 Certified Mail Return Receipt Electronic and by Priority Mail on January 14, 2025 (Doc. 10 21). Default was entered against Defendant Phillips on December 20, 2024 (Doc. 13). 11 Default was entered against Defendant AZ's Finest on February 24, 2025 (Doc. 25). 12 Defendant Hayes answered the Complaint (Doc.

5), and a Case Management Order 13 issued (Doc. 27). 14 In June 2025, Plaintiff filed a motion for leave to file a First Amended Complaint 15 (Doc. 33), which was granted (Doc. 34). The First Amended Complaint was thereafter 16 filed (Doc. 35), which added Defendant Luxor Towing and Recovery LLC (“Defendant 17 Luxor Towing”) and associated allegations (Id.).³ 18 As a result of a settlement conference, Plaintiff and Defendant Hayes resolved the 19 claims between them (Docs. 38, 40, 42); Defendant Hayes is dismissed from these 20 proceedings (Docs. 45, 52, 53). 21 Plaintiff dismissed Defendant Luxor Towing without prejudice and due to inability 22 to effectuate service upon Defendant Luxor Towing (Doc. 42 at 2; Doc. 43). Thus, 23 remaining defendants are Defendant Phillips and Defendant AZ’s Finest. 24 The Court denied without prejudice a previous motion by Plaintiff for default 25 judgment against Defendant Phillips and Defendant AZ’s Finest (Doc. 50). In doing so, 26 27 3 The First Amended Complaint also added an Exhibit A (Doc. 35-2), but Exhibit A to the actual First Amended Complaint (Id.) is different from the Exhibit A submitted with the 28 proposed First Amended Complaint (Doc. 33-1 at 18-20). 1 the Court observed: 2 Here, Plaintiff’s motion for default judgment (Doc. 46) does not 3 acknowledge let alone sufficiently address the effect of the First Amended Complaint on the entries of default, which were previous to the filing of the 4 First Amended Complaint (see Docs. 12, 13, 24, 25, 33, 35). Service upon 5 Defendants AZ’s Finest Towing, LLC and Alex Phillips was completed with the Complaint (Docs. 11, 21) and not with the later filed First Amended 6 Complaint (Doc. 35). Despite the First Amended Complaint (Doc. 35), the 7 motion for default judgment (Doc. 46) repeatedly cites allegations from the original complaint (Doc. 1). Nor does the motion for default judgment (Doc. 8 46) address the reasons Plaintiff stated for the amendment to the original 9 complaint (Doc. 33). Indeed, the motion to amend stated that “[d]uring discovery, Defendant Flyn Hayes disclosed that she hired Luxor Towing and 10 Recovery LLC to repossess the subject vehicle, not AZ’s Finest Towing, 11 LLC” (Id. at 2). Further, Plaintiff’s motion for default judgment (Doc. 46) does not address any impact of Plaintiff’s settlement with Defendant Hayes 12 (Docs. 38, 45; see also Doc. 40 (“Defendant Hayes states that she will be unable to pay the settlement before December 12, 2025”)). Additionally, the 13 amount sought for actual damages in the motion for default judgment (Doc. 14 46) appears supported only by an allegation of an agreement between Plaintiff and settled Defendant Hayes. 15 (Doc. 50 at 2 (footnote omitted)). 16 On February 10, 2026, Plaintiff filed Plaintiff’s Amended Motion for Entry of 17 Default Judgment Against Defendants AZ’s Finest Towing, LLC and Alex Phillips (Doc. 18 54). In the motion, Plaintiff asserts: 19 20 Defendant AZ’s Finest Towing, LLC (“AZ’s Finest”), and its owner and operator, Defendant Alex Phillips (“Phillips”) (together “Defendants”), 21 breached the peace in wrongfully repossessing Plaintiff Matthew Todd 22 Griffith’s (“Plaintiff” or “Griffith”) 2010 Cadillac in violation of the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 et seq., and 23 Article 9 of the Arizona Uniform Commercial Code, A.R.S. § 47-9609. 24 (Doc. 54 at 1). Further, “Plaintiff now applies for the entry of a default judgment against 25 Defendants in the total amount of \$8,332.50, consisting of \$1,000 for statutory damages 26 under the FDCPA,

\$6,800 for attorney's fees, and \$532.50 for costs" (Id.). 27 28

1 II. PLAINTIFF'S AMENDED MOTION FOR ENTRY OF DEFAULT

2 JUDGMENT AGAINST DEFENDANTS AZ'S FINEST TOWING, LLC AND

3 ALEX PHILLIPS (Doc. 54). 4 After entry of default, the Court may enter a default judgment. Fed. R. Civ. P. 5 55(b)(2). "[T]he decision to enter a default judgment is discretionary." Alan Neuman 6 Prods., Inc. v. Albright, 862 F.2d 1388, 1392 (9th Cir. 1988) (citations omitted). Once the 7 Court determines that service was sufficient, it should consider the following factors in 8 exercising its discretion regarding entry of a default judgment: 9

(1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff's 10 substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at stake in the action, (5) the possibility of a dispute concerning material 11 facts, (6) whether the default was due to excusable neglect, and (7) the strong 12 policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits. 13 Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986) (citation omitted). 14 Here, Plaintiff seeks default judgment against Defendant Phillips and Defendant 15 AZ's Finest, who were served with the Complaint and against whom default was entered 16 before Plaintiff moved for leave to file the First Amended Complaint (Docs. 13, 25, 33, 17 35). Plaintiff did not serve Defendant Phillips or Defendant AZ's Finest with the First 18 Amended Complaint. 19 A first amended complaint supersedes the original complaint. See Ferdik v. 20 Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992); Hal Roach Studios v. Richard Feiner & 21 Co., 896 F.2d 1542, 1546 (9th Cir. 1989). After amendment, the Court treats the original 22 complaint and all prior amended complaints as nonexistent. Ferdik, 963 F.2d at 1262. 23 In Plaintiff's Amended Motion for Entry of Default Judgment Against Defendants 24 AZ's Finest Towing, LLC and Alex Phillips (Doc. 54), Plaintiff cites one case in support 25 of moving for default judgment against Defendant Phillips and Defendant AZ's Finest 26 despite not having served Defendant Phillips and Defendant AZ's Finest with the First 27 Amended Complaint: 28 1 While an amendment to a complaint generally nullifies a default entered 2 against the original complaint, the outcome can depend on other factors, 3 including whether the amendment materially alters the claims or theories of the case. See Coyante v. Puerto Rico Ports Auth., 105 F.3d 17, 23 (1st Cir. 4 1997). In Coyante, the First Circuit affirmed the district court's denial of an 5 entry of default more than two years after the answer to the amended complaint was due, finding that the defendants had answered the initial 6 complaint and that the amended complaint did not materially alter the 7 plaintiff's theory of the case. Id. 8 (Doc. 54 at 3). The case cited by Plaintiff is not from the Ninth Circuit and does not 9 contravene Ninth Circuit law, cited above, that an amended complaint supersedes the 10 original complaint. 11 Moreover, Plaintiff's failure to serve Defendant Phillips and Defendant AZ's Finest 12 with the First Amended Complaint is concerning insofar as the new allegations in the First 13 Amended Complaint. Plaintiff described in the motion for leave to file the First Amended 14 Complaint: 15 During discovery, Defendant Flyn Hayes disclosed that she hired Luxor 16 Towing and Recovery LLC to repossess the subject

vehicle, not AZ's Finest Towing, LLC. Plaintiff subsequently learned that both Luxor Towing and the 17 previously named Defendant, AZ's Finest Towing, LLC, are owned and 18 operated by Defendant Alex Phillips. 19 Plaintiff now seeks leave to amend the Complaint to (1) add Luxor Towing 20 and Recovery LLC as an additional defendant, and (2) amend the allegations previously directed at AZ's Finest Towing to apply to Luxor Towing and 21 AZ's Finest based on newly discovered information. 22 (Doc. 33 at 2). These statements call into question Plaintiff's representation in the pending 23 motion for default judgment that "Plaintiff's factual allegations and theory of liability 24 towards Defendants AZ's Finest and Phillips were not materially altered by the filing of 25 the FAC" (Doc. 54 at 3). The First Amendment Complaint's allegations that Defendant 26 Alex Phillips may have been acting for Defendant Luxor Towing during the alleged events 27 undermines the claim in the pending motion for default judgment statement that the 28 1 "allegations and claims against Defendants AZ's Finest and Phillips" in the Complaint and 2 First Amended Complaint "are identical" (Id.). It hardly seems identical to first allege in 3 the Complaint that Defendant AZ's Finest is responsible and then to later allege in the First 4 Amended Complaint that Defendant Luxor Towing is alternatively responsible depending 5 on which business Defendant Phillips was acting (see Doc. 35 at ¶¶ 36, 37, 72, 73, 74, 87, 6 93, 94, 96, 97, 98, 99, 106). Indeed, Plaintiff did not dismiss Defendant Luxor Towing due 7 to discovered facts but because "Plaintiff has been unable to obtain service of process on 8 Defendant Luxor Towing" despite "diligent efforts" (Doc. 42 at 2; see also Doc. 43). Nor 9 is Defendant Phillips on notice from the Complaint that Plaintiff asserts that Defendant 10 Phillips was acting on behalf of Defendant Luxor Towing. 11 In sum, Plaintiff has not properly served Defendant Phillips or Defendants AZ's 12 Finest with the First Amended Complaint. The First Amended Complaint superseded the 13 Complaint. The Complaint did not mention Luxor Towing, and neither Defendant Phillips 14 nor Defendant AZ's Finest are on notice of Plaintiff's assertions regarding Defendant 15 Luxor Towing, which are intertwined with and important to the assertions against 16 Defendant Phillips and Defendant AZ's Finest. 17 Thus, it is recommended that the entries of default against Defendant Phillips and 18 Defendants AZ's Finest regarding the superseded Complaint and prior to the filing of the 19 operative First Amended Complaint be set aside, the pending motion for default judgment 20 be denied, and Plaintiff be ordered to promptly serve Defendant Phillips and Defendants 21 AZ's Finest with the First Amended Complaint. 22 Accordingly, 23 IT IS HEREBY RECOMMENDED that Plaintiff's Amended Motion for Entry of 24 Default Judgment Against Defendants AZ's Finest Towing, LLC and Alex Phillips (Doc. 25 54) be denied. 26 IT IS FURTHER RECOMMENDED that the entries of default on the superseded 27 Complaint (Docs. 13, 25) be set aside. 28 IT IS FURTHER RECOMMENDED that Plaintiff be directed to effectuate 1 || service of process on Defendant Phillips and Defendant AZ's Finest promptly and no later than sixty (60) days from the date of this Order. 3 The above recommendations are not orders that are immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1) of the 5 || Federal Rules of Appellate

Procedure should not be filed until entry of the District Court's judgment. The parties shall have fourteen days from the date of service of a copy of this recommendation within which to file specific written objections with the Court. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6, 72. The parties shall have fourteen days within which to file responses to any objections. Failure to file timely objections to the Magistrate Judge's Report and Recommendation may result in the acceptance of the Report and Recommendation by the District Court without further review. See *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). Failure to file timely objections to any factual determination of the Magistrate Judge may be considered a waiver of a party's right to appellate review of the findings of fact in an order or judgment entered pursuant to the Magistrate Judge's recommendation. See Fed. R. Civ. P. 72. In addition, LRCiv 7.2(e)(3) provides that "[u]nless otherwise permitted by the Court, an objection to a Report and Recommendation issued by a Magistrate Judge shall not exceed ten (10) pages." 18 Dated this 17th day of February, 2026. 19 Honorable Deborah M. Fine United States Magistrate Judge 23 24 25 26 27 28 -7-