

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Mar 08, 2019

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

FARMERS NEW WORLD LIFE
INSURANCE, a Washington
corporation,

Plaintiff,

v.

BRIDGETTE BURTON, an
individual; MARIANNA BURTON,
an individual; JACOB BURTON, an
individual; ANTHONY BURTON,
an individual; GABRIEL BURTON,
an individual; CATHERINE
BURTON, an individual; JOSEPH
BURTON, an individual; MICHAEL
BURTON, an individual; MARISSA
BURTON, an individual; DANIEL
BURTON, an individual; PATRICK
BURTON, an individual;
MATTHEW BURTON, an
individual; ANDREA BURTON
SANDBERG, an individual; and
JEREMY BURTON, an individual,

Defendants.

NO: 2:18-CV-30-RMP

ORDER GRANTING DEFAULT
JUDGMENT

1 states of residence, California and Tennessee, permitted service by publication if
2 personal service could not be effectuated. ECF No. 21. The Court granted Farmers'
3 request. ECF No. 30. Farmers filed proof of service by publication on Marissa and
4 Matthew on June 15, 2018. ECF Nos. 34 and 35.

5 As the other Burton children and Ms. Zielke Burton litigated the dispute over
6 the proceeds, the Default Defendants failed to respond or appear in this matter.

7 Having not heard from the Default Defendants, Farmers moved for entry of default
8 on December 26, 2018. ECF No. 75. The next day, the District Court Clerk for the
9 Eastern District of Washington entered an order of default as to the Default
10 Defendants. ECF No. 76. Farmers now moves for default judgment against the
11 Default Defendants, asking the Court to enjoin the Default Defendants from
12 instituting or prosecuting any court action against Farmers for the recovery of the
13 proceeds at issue in this case. ECF No. 85.

14 **LEGAL STANDARD**

15 A court may exercise its discretion to order default judgment following the
16 entry of default by the Clerk of the Court. Fed. R. Civ. P. 55(b). Once the Clerk of
17 Court enters an order of default, the well-pleaded allegations of the complaint,
18 except those concerning damages, are deemed true. Fed. R. Civ. P. 8(b)(6); *see*
19 *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917–18 (9th Cir. 1987). In
20 conjunction with moving for default judgment, Plaintiff must provide evidence of
21

1 all damages sought in the complaint, and the damages sought must not be different
2 in kind or exceed the amount demanded in the pleadings. Fed. R. Civ. P. 54(c).

3 Before granting default judgment, a district court should ensure the adequacy
4 of the service of process on the party against whom default judgment is requested.

5 *Calista Enters. Ltd. v. Tenza Trading Ltd.*, No. 3:13-cv-01045-SI, 2014 WL

6 3670856, at *2 (D. Or. July 23, 2014). This is because “[a] federal court does not
7 have jurisdiction over a defendant unless the defendant has been served properly.”

8 *Direct Mail Specialists, Inc. v. Eclat Computerized Techs., Inc.*, 840 F.2d 685 (9th

9 Cir. 1988). Improper service of process is an adequate ground to set aside a clerk’s
10 entry of default. *See Mason v. Genisco Tech. Corp.*, 960 F.2d 849, 851 (9th Cir.

11 1992).

12 DISCUSSION

13 *Service of Process*

14 The Court must determine whether proper service of process was completed
15 on the Default Defendants before assessing whether default judgment is appropriate.

16 *Calista Enters.*, 2014 WL 3670856, at *2.

17 Service of process is completed by following the guidelines of Federal Rule of
18 Civil Procedure 4 or state law for serving summons in the state in which the action is
19 brought or the state in which service is made. Fed. R. Civ. P. 4(e)(1). Under the
20 federal rules, service is completed by personally serving the defendant; serving the
21 summons and complaint on a person of suitable age and discretion at the

1 individual's usual place of abode; or serving an agent authorized to receive service
2 of process on behalf of the defendant. Fed. R. Civ. P. 4(e)(2). In California and
3 Tennessee, service may be made by publication if the party being served cannot be
4 served with reasonable diligence and the serving party receives permission from a
5 court. Cal. Civ. P. Code § 415.50; Tenn. Code § 21-1-204. In both states, service is
6 effective after four consecutive weeks of publication. Cal. Civ. P. Code § 415.50(c)
7 (stating that service of summons is completed as provided in section 6064 of the
8 Government Code); Cal. Gov. Code § 6064 ("Publication of notice pursuant to this
9 section shall be once a week for four successive weeks. . . . The period of notice . . .
10 terminates at the end of the twenty-eighth day."); Tenn. Code § 21-1-2014(b).

11 Farmers personally served Patrick Burton at his residence in Redding,
12 California. ECF No. 33. The Court finds that service of process on Patrick Burton
13 was proper. Fed. R. Civ. P. 4(e)(2)(A).

14 Farmers sub-served Daniel Burton, Andrea Burton Sandberg, and Jeremy
15 Burton. Daniel Burton was served by leaving the summons and complaint at his
16 residence in Redding, California with Patrick Burton, a person of suitable age and
17 discretion. ECF No. 32. Andrea Burton Sandberg was served by leaving the
18 summons and complaint with her husband, Jason Sandberg, at her residence in
19 Baker City, Oregon. ECF No. 16. Jeremy Burton was served at his residence in
20 Compton, California by leaving the summons and complaint with another resident of
21 the home who was of suitable age and discretion to receive service. ECF No. 19.

1 The Court finds that Daniel, Andrea, and Jeremy were properly served. Fed. R. Civ.
2 P. 4(e)(2)(B).

3 Being unable to personally serve or sub-serve Marissa Burton or Matthew
4 Burton, Farmers served them by publication after receiving permission from the
5 Court to do so. ECF No. 30. Marissa's service was published in the Red Bluff
6 Daily News in Red Bluff, California for four weeks in May and June of 2018. ECF
7 No. 34. Matthew's service was published in the Williamson Herald in Williamson
8 County, Tennessee for four weeks in May and June of 2018. ECF No. 35. After
9 four weeks of publication, the service of process was effectuated. *See* Cal. Civ. P.
10 Code § 415.50(c); Tenn. Code § 21-1-2014(b). The Court finds that Marissa and
11 Matthew Burton were properly served. Fed. R. Civ. P. 4(e)(1).

12 Farmers properly completed service of process on all six of the Default
13 Defendants. Therefore, the Court will analyze whether default judgment is
14 appropriate.

15 ***Default Judgment***

16 The Ninth Circuit has prescribed the following factors to guide the district
17 court's decision regarding the entry of a default judgment: "(1) the possibility of
18 prejudice to the plaintiff, (2) the merits of plaintiff's substantive claim, (3) the
19 sufficiency of the complaint, (4) the sum of money at stake in the action, (5) the
20 possibility of a dispute concerning material facts, (6) whether the default was due to
21 excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil

1 Procedure favoring decisions on the merits.” *Eitel v. McCool*, 782 F.2d 1470, 1471–
2 72 (9th Cir. 1986).

3 The first factor, the possibility of prejudice to Farmers, favors granting default
4 judgment. Farmers has gone to great lengths to locate and serve the Default
5 Defendants, resorting to service by publication after being unable to personally serve
6 two of them. *See* ECF No. 86. Despite properly serving them, Default Defendants
7 failed to appear, file an answer to the interpleader complaint, or indicate whether
8 they were interested in claiming the life insurance proceeds. Farmers appears to lack
9 an alternative to default judgment to ensure that Default Defendants will not claim
10 the proceeds in the future. Therefore, the Court finds that Farmers would be
11 prejudiced if they were not granted default judgment against the Default Defendants.

12 The second and third *Eitel* factors are assessed by analyzing whether the
13 allegations in the complaint are sufficient to state a claim on which Farmers may
14 recover. *See Danning v. Lavine*, 572 F.2d 1386, 1388 (9th Cir. 1978). An insurer’s
15 good faith belief that it faced the possibility of multiple colorable competing claims
16 to the amount in controversy satisfies the pleading requirement in an interpleader
17 action. *Michelman v. Lincoln Nat. Life Ins. Co.*, 685 F.3d 887, 894 (9th Cir. 2012).
18 Here, Farmers had that good faith belief because there were two outstanding claims
19 for the proceeds of Wallace’s life insurance at the time Farmers filed this action.
20 ECF No. 1 at 8. Therefore, Farmers’ complaint was sufficient to state a claim, and
21 the second and third *Eitel* factors favor granting the default judgment.

1 The fourth *Eitel* factor is the sum of money at stake in the action. *Eitel*, 782
2 F.2d at 1471–72. Farmers is seeking an order enjoining the Default Defendants
3 from disputing the ownership of the policy proceeds. ECF No. 85 at 6. They are not
4 seeking any monetary damages. *Id.* When the plaintiff does not seek monetary
5 damages, this factor favors granting default judgment. *See PepsiCo, Inc. v. Cal. Sec.*
6 *Cans*, 238 F. Supp. 2d 1172, 1176–77 (C.D. Cal. 2002). Because Farmers is not
7 seeking monetary damages, the fourth *Eitel* factor favors granting the default
8 judgment.

9 The fifth *Eitel* factor is the possibility of a dispute concerning the material
10 facts. *Eitel*, 782 F.2d at 1471–72. As shown through the previous fourteen months
11 of litigation and competing motions for summary judgment, the material facts of this
12 case are disputed. If the Default Defendants joined the dispute in this case, it is
13 possible that they would have disputed the facts offered by the other Burton children
14 and Ms. Zielke Burton. Therefore, the fifth factor weighs against granting default
15 judgment.

16 The sixth *Eitel* factor is whether the entry of default was due to excusable
17 neglect. *Eitel*, 782 F.2d at 1471–72. In *Eitel*, the Ninth Circuit found excusable
18 neglect when a party did not answer a complaint because it thought that it had
19 reached a settlement with the plaintiff. *Id.* at 1472. Any neglect in this case is not
20 excusable. Farmers personally served one of the Default Defendants, sub-served
21 three of them, and resorted to service by publication when they could not complete

1 service on the other two. *See* ECF No. 86. Because the Default Defendants are all
2 siblings, they also likely are aware of the ongoing dispute for Wallace’s life
3 insurance policy proceeds. Default Defendants’ failure to appear or otherwise
4 answer in this case is not due to excusable neglect. Therefore, the sixth *Eitel* factor
5 weighs in favor of granting default judgment.

6 The seventh *Eitel* factor is the strong policy favoring decisions on the merits
7 in the Federal Rules of Civil Procedure. *Eitel*, 782 F.2d at 1471–72. “Whenever it
8 is reasonably possible, cases should be decided upon their merits.” *Pena v. Seguros*
9 *La Comercial, S.A.*, 770 F.2d 811, 814 (9th Cir. 1985). But a defendant’s failure to
10 appear “makes a decision on the merits impractical, if not impossible.” *PepsiCo*,
11 238 F. Supp. 2d at 1177. The Default Defendants’ failure to appear makes an
12 adjudication on the merits of their potential claims to the policy proceeds
13 impossible. Therefore, the seventh *Eitel* factor weighs in favor of granting default
14 judgment.

15 Six of the seven *Eitel* factors weigh in favor of granting default judgment.

16 Based on these factors, the Court finds that granting default judgment is appropriate.

17 Accordingly, **IT IS HEREBY ORDERED:**

18 1. Plaintiff’s Motion for Default Judgment, **ECF No. 85**, is **GRANTED**.

19 2. Judgment shall be entered in favor of Plaintiff against Defendants

20 Marissa Burton, Daniel Burton, Patrick Burton, Matthew Burton, Andrea Burton
21 Sandberg, and Jeremy Burton, enjoining them from:

1 a. Instituting or prosecuting any proceeding in any state or United
2 States court against Farmers New World Life Insurance Company for
3 the recovery of life insurance benefits regarding the Nonparticipating
4 Flexible Premium Universal Life insurance policy issued to Wallace
5 Burton on May 17, 1989, for the principal sum of One Hundred
6 Thousand Dollars, policy number 004496399U; and

7 b. Instituting or prosecuting any proceeding in any state or United
8 States court against Farmers New World Life Insurance regarding any
9 policy benefits involved in this interpleader actions pursuant to 28
10 U.S.C. § 2361.

11 3. Marissa Burton, Daniel Burton, Patrick Burton, Matthew Burton,
12 Andrea Burton Sandberg, and Jeremy Burton shall be terminated as Defendants in
13 this case.

14 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this
15 Order, enter judgment as directed, terminate defendants as directed, and provide
16 copies of this Order to counsel.

17 **DATED** March 8, 2019.

18 *s/ Rosanna Malouf Peterson*
19 ROSANNA MALOUF PETERSON
20 United States District Judge
21