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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Lori Eichenberger,

10 Plaintiff,

11 v.

12 Falcon Air Express Incorporated,

13 Defendant.
14

No. CV-14-00168-PHX-DGC

ORDER

15 The Court held a hearing on February 6, 2015. On the basis of the hearing and the
16 record in this case, the Court has determined that it must enter default judgment against
17 Defendant Falcon Air Express Incorporated.

18 The Court set a case management schedule for this case on August 26, 2014.
19 Doc. 18. The order cautioned the parties that the deadlines established by the Court were
20 real and that the Court would not, absent truly extraordinary circumstances, extend the
21 schedule. *Id.* at 5.

22 A few months later, Defendant's counsel moved to withdraw. The Court set a
23 hearing for December 19, 2014, and ordered a representative of Defendant to participate.
24 The hearing was held as scheduled, and the general manager of Defendant, Nelson
25 Ramiz, Jr., participated. Defense counsel stood by their motion to withdraw. The Court
26 explained to Mr. Ramiz that a corporate defendant cannot appear in court without
27 counsel, and that the Court would be required to enter a default judgment against
28 Defendant if it did not find replacement counsel. Mr. Ramiz said he understood, and that

1 Defendant planned to locate replacement counsel promptly. The Court accordingly
2 granted Defendant until January 23, 2015, for new counsel to appear.

3 The Court also discussed discovery issues. Defendant had not responded to
4 written discovery served by Plaintiff. The Court extended the discovery response date to
5 February 6, 2015, and advised Mr. Ramiz that the new defense counsel would need to be
6 prepared to provide the requested documents and interrogatory answers by that date. The
7 Court also told the parties it would hold a second case management conference on
8 February 6, 2015, to adjust the remainder of the litigation schedule in light of the delay
9 caused by the motion to withdraw and the failure to respond to discovery.

10 Although new counsel did appear for Defendant, that counsel promptly moved to
11 withdraw. Doc. 29. Counsel's motion to withdraw explains that Defendant has failed to
12 respond to counsel's repeated attempts to communicate regarding the case and the
13 pending deadlines, leaving counsel unable to properly represent Defendants. *Id.* The
14 Court promptly set a hearing on the motion to withdraw for February 6, 2015. Doc. 30.
15 The Court specifically required Mr. Ramiz to appear by telephone at the hearing,
16 directing him to call the Court's chambers before the hearing. *Id.*

17 Mr. Ramiz did not appear or participate in the hearing. The Court's staff tried to
18 call him twice on a number used to reach him in the past, but received no answer. Staff
19 left a message, but Mr. Rmiz never returned the call. Defense counsel stated during the
20 hearing that he emailed a copy of the Court's order to Mr. Ramiz and emphasized his
21 need to participate in the hearing. Defense counsel said he had received other responses
22 from Mr. Ramiz, using the same email address, since he sent the email regarding the
23 hearing, suggesting that Mr. Ramiz received the order. Counsel also sent a copy of the
24 order to Mr. Ramiz by overnight mail so that he received it before the hearing.

25 Thus, the Court is faced with the following situation: Defendant clearly
26 understands that it must be represented by counsel in federal court. Defendant clearly
27 understands that default judgment will be entered if it is unrepresented. Defendant
28 clearly understands that discovery was due on February 6, 2015, and that a second case

1 management conference was to occur on that day. And Mr. Ramiz was directly ordered
2 by the Court to participate in the February 6 hearing.

3 Despite this knowledge, Mr. Ramiz failed to appear at the hearing as ordered,
4 failed to provide the discovery due by February 6, and failed to communicate with
5 counsel so as to enable counsel to litigate this case and participate in the second case
6 management conference. Defendant did so knowing of counsel's motion to withdraw
7 and knowing that the withdrawal would result in a default judgment being entered.

8 In addition to this situation, Plaintiff's counsel explained that he has another case
9 pending against Defendant in this court, CV-14-2705 PHX NVW. Defendant recently
10 has failed to appear in that case as well.

11 The Ninth Circuit has identified five factors that a district court must consider
12 before dismissing a case or declaring a default: (1) the public's interest in expeditious
13 resolution of litigation; (2) the Court's need to manage its docket; (3) the risk of prejudice
14 to the other party; (4) the public policy favoring the disposition of cases on their merits;
15 and (5) the availability of less drastic sanctions. *Dreith v. Nu Image, Inc.*, 648 F.3d 779,
16 788 (9th Cir. 2011). The first three factors favor entry of a default judgment in this case.
17 This litigation has already been delayed by Defendant's problems with counsel and its
18 failure to comply with discovery obligations; the Court cannot effectively manage its
19 docket when a party presents repeated and rapid withdrawals of counsel and refuses to
20 appear and participate in hearings when ordered; and Plaintiff is prejudiced when
21 discovery receives no response and the case is delayed by Defendant's inaction. The
22 Fourth factor, as always, weighs against default. The fifth factor urges caution, but when
23 two counsel have withdrawn in the last two months, deadlines have been missed, and
24 Defendant has disregarded a clear order to participate in a hearing, the Court is persuaded
25 that additional steps would only result in further similar conduct. The Court accordingly
26 finds that the relevant factors weigh in favor of default.

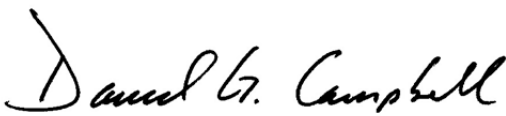
27 **IT IS ORDERED:**

- 28 1. Defense counsel's motion to withdraw (Doc. 29) is **granted**.

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- 2. The Court will enter default judgment against Defendant.
- 3. Plaintiff shall, by **February 20, 2015**, submit a proposed form of judgment with evidence supporting the damages and other relief requested in the proposed order.

Dated this 9th day of February, 2015.



David G. Campbell
United States District Judge