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4
5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE DISTRICT OF ARIZONA

7 Safeco Insurance Company of)
8 America,)

No. CV-23-01866-PHX-SPL

9 Plaintiff,)

ORDER

10 vs.)

11 Ronel McKie, et al.,)

12 Defendants.)
13

14 Before the Court is Plaintiff’s Motion for Default Judgment, in which it asks the
15 Court to enter a default judgment against Defendants Ronel McKie, Kazik McKie, Kurt
16 McKie, Waverly Lunsford, and Zahnijah Russell (collectively, “Defaulted Defendants”).
17 (Doc. 56). For the following reasons, the Motion is granted.

18 **I. BACKGROUND**

19 Plaintiff is an insurance company that insured a vehicle driven by Defendant Kurt
20 McKie, who allegedly caused a car accident involving multiple other Defendants on July
21 8, 2023. (Doc. 56 at 2). The vehicle belonged to Defendant Kazik McKie, and the insurance
22 policy was issued to Defendants Kazik McKie and Ronel McKie. (*Id.*; Doc. 1 at 3).
23 Defendants Waverly Lunsford and Zahnijah Russell were passengers in the vehicle at the
24 time of the accident. (Doc. 56 at 2).

25 The policy provided bodily injury liability coverage with limits of \$25,000 per
26 person and \$50,000 per accident and underinsured motorist coverage with limits of \$25,000
27 per person and \$50,000 per accident. (Doc. 56 at 2–3). The policy was effective on the date
28 of the accident, and Plaintiff recognized its duty to defend and indemnify Defendants Kazik

1 McKie, Kurt McKie, and Ronel McKie for lawsuits and damages related to the accident,
2 subject to the policy’s terms, conditions, and limits. (*Id.* at 3). Plaintiff alleges that various
3 potential claimants have made demands that indicate the policy coverage “will not be
4 sufficient to settle the existing claims for full value.” (*Id.*). Additionally, because other
5 Defendants may have conflicting claims to the coverage, Plaintiff alleges that it faces
6 uncertainty and potential prejudice regarding the proper recipients, amounts, and claims
7 under the policy. (*Id.*). Thus, on September 5, 2023, Plaintiff filed its Complaint in
8 Interpleader pursuant to Fed. R. Civ. P. 22 to resolve potential competing claims for
9 payment of the insurance policy. (Doc. 1).

10 Two defendants—Defendants Jerry Rodriguez and Valleywise Health Medical
11 Center—have already settled their claims with Plaintiff and been dismissed from this
12 action. (Docs. 52, 54). Despite being duly served with the Summons and Interpleader
13 Complaint, the Defaulted Defendants failed to appear to in this action. (Doc. 56 at 4–5).
14 The Clerk of Court entered default against Defendants Ronel McKie, Kazik McKie, and
15 Kurt McKie on February 5, 2024 (Doc. 36), and against Defendants Waverly Lunsford and
16 Zahnijah Russell on September 5, 2024. (Doc. 50). On October 4, 2024, Plaintiff filed the
17 present Motion for Entry of Default against the Defaulted Defendants. (Doc. 56).

18 **II. DISCUSSION**

19 **a. Subject Matter Jurisdiction, Personal Jurisdiction, and Service**

20 When default judgment is sought against a non-appearing party, a court has “an
21 affirmative duty to look into its jurisdiction over both the subject matter and the parties.”
22 *In re Tuli*, 172 F.3d 707, 712 (9th Cir. 1999) (“To avoid entering a default judgment that
23 can later be successfully attacked as void, a court should determine whether it has the
24 power, i.e., the jurisdiction, to enter judgment in the first place.”). A court has a similar
25 duty with respect to service of process. *See Fishman v. AIG Ins. Co.*, No. CV 07-0589-
26 PHX-RCB, 2007 WL 4248867, at *3 (D. Ariz. Nov. 30, 2007) (“Because defendant has
27 not been properly served, the court lacks jurisdiction to consider plaintiff’s motions for
28 default judgment.”). These considerations are “critical because ‘[w]ithout a proper basis

1 for jurisdiction, or in the absence of proper service of process, the district court has *no*
2 *power to render any judgment* against the defendant’s person or property unless the
3 defendant has consented to jurisdiction or waived the lack of process.” *Id.* (citing *S.E.C.*
4 *v. Ross*, 504 F.3d 1130, 1138–39 (9th Cir. 2007)).

5 The Court has jurisdiction over the subject matter. Pursuant to 28 U.S.C. §
6 1332(a)(1), a district court may exercise subject-matter jurisdiction in interpleader actions
7 brought under Fed. R. Civ. P. 22(a)(1) if there is complete diversity of citizenship between
8 the plaintiff-stakeholders and the defendant-claimants and the amount in controversy
9 exceeds \$75,000. *See CMFG Life Ins. Co. v. Smith*, No. CV 13-261 ABC (CWX), 2014
10 WL 12585794, at *1 (C.D. Cal. Mar. 3, 2014); *see also Lee v. W. Coast Life Ins. Co.*, 688
11 F.3d 1004, 1008 (9th Cir. 2012) (“For interpleader under [R]ule 22(1) predicated on
12 diversity jurisdiction, there must be diversity between the stakeholder on one hand and the
13 claimants on the other.”) (citation and quotation omitted).

14 Here, Plaintiff and Defendants are citizens of different states. Plaintiff is a
15 Massachusetts corporation with its principal place of business in New Hampshire. (Doc. 1
16 at 1); *see Johnson v. Columbia Properties Anchorage, LP*, 437 F.3d 894, 899 (9th Cir.
17 2006) (“[A] corporation is a citizen only of (1) the state where its principal place of business
18 is located, and (2) the state in which it is incorporated.”). Defendants Ronel McKie, Kazik
19 McKie, Kurt McKie, and Zahnijah Russell were, at all relevant times, residents of
20 Maricopa County, Arizona, and Defendant Waverly Lunsford was, at all relevant times, a
21 resident of South Boston, Virginia. (Doc. 1 at 1–2). Moreover, Plaintiff has plead that the
22 amount in controversy is at least \$150,000. (*Id.* at 5). Accordingly, the Court has subject-
23 matter jurisdiction.

24 Further, the Court has personal jurisdiction over Defendants Ronel McKie, Kazik
25 McKie, Kurt McKie, and Zahnijah Russell because they are citizens of Arizona and were
26 properly served. *See Pennoyer v. Neff*, 95 U.S. 714, 722 (1877) (noting that “every State
27 possesses exclusive jurisdiction and sovereignty over persons and property within its
28 territory”); *Benny v. Pipes*, 799 F.2d 489, 492 (9th Cir. 1986) (noting that a federal court

1 lacks personal jurisdiction over defendant unless defendant properly served). Plaintiff
2 served Defendants Ronel McKie, Kazik McKie, and Kurt McKie by personal service.
3 (Docs. 56-1; 56-2; 56-3). On February 1, 2024, Plaintiff filed a Motion for Alternative
4 Service after multiple unsuccessful attempts to locate and serve Defendants Zahnijah and
5 Lunsford. (Doc. 32). The Court granted Plaintiff’s Motion, and Plaintiff properly served
6 Defendant Zahnijah Russell by publication. *See* (Docs. 41, 42).

7 Additionally, the Court has personal jurisdiction over Defendant Waverly Lunsford.
8 Courts may exercise specific personal jurisdiction over non-resident defendants for claims
9 arising out of the defendant’s activity in the forum state if the exercise of jurisdiction
10 comports with fair play and substantial justice. *Schwarzenegger v. Fred Martin Motor Co.*,
11 374 F.3d 797, 802 (9th Cir. 2004). As the case arises out of a car accident that Defendant
12 Lunsford was involved in that occurred in Arizona and one of Defendant Lunsford’s last
13 known addresses was in Arizona, the Court finds that exercise of personal jurisdiction does
14 not offend traditional notions of fair play and justice. *See* (Doc. 41 at 3 n.1). The Court also
15 finds that Defendant Lunsford was properly served by publication after the Court granted
16 Plaintiff’s Motion for Alternative Service. *See* (Docs. 41, 42).

17 **b. Default Judgment Analysis: *Eitel* Factors**

18 “A defendant’s default does not automatically entitle a plaintiff to a default
19 judgment.” *Hartford Life & Accident Ins. Co. v. Gomez*, No. CV-13-01144-PHX-BSB,
20 2013 WL 5327558, at *2 (D. Ariz. Sept. 24, 2013). Instead, once a default has been entered,
21 the district court has discretion to grant a default judgment. *See* Fed. R. Civ. P. 55(b)(2);
22 *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). Factors the Court may consider
23 include: (1) the possibility of prejudice to the plaintiff; (2) the merits of the claim; (3) the
24 sufficiency of the complaint; (4) the amount of money at stake; (5) the possibility of a
25 dispute concerning material facts; (6) whether default was due to excusable neglect; and
26 (7) the policy favoring a decision on the merits. *See Eitel v. McCool*, 782 F.2d 1470, 1471–
27 72 (9th Cir. 1986). In applying the *Eitel* factors, “the factual allegations of the complaint,
28 except those relating to the amount of damages, will be taken as true.” *Geddes v. United*

1 *Fin. Grp.*, 559 F.2d 557, 560 (9th Cir. 1977).

2 i. First, Fifth, Sixth, and Seventh Eitel Factors

3 In a case such as this, where the defendants have failed to meaningfully participate
4 in the litigation, the first, fifth, sixth, and seventh factors generally favor the plaintiff. *See*
5 *Zekelman Indus. Inc. v. Marker*, No. CV-19-02109-PHX-DWL, 2020 WL 1495210, at *3
6 (D. Ariz. Mar. 27, 2020). The first factor—the possibility of prejudice to Plaintiff—weighs
7 in favor of granting default judgment. Defendants have failed to appear in this action,
8 despite having been served in November 2023 and May 2024. (Doc. 56 at 4). If Plaintiff’s
9 Motion is denied, then Plaintiff will be prejudiced “because it would be denied the benefits
10 of the interpleader process, which is intended to protect stakeholders from multiple liability
11 as well as from the expense of multiple litigation.” *Texas Ins. Co. v. Athena Logistic Sols.*
12 *LLC*, No. CV-23-00038-TUC-RM, 2023 WL 4746123, at *2 (D. Ariz. July 25, 2023)
13 (citation and internal quotation marks omitted).

14 The fifth and sixth factors—the possibility of a dispute concerning material facts
15 and whether default was due to excusable neglect—also weigh in favor of granting default
16 judgment. Given the sufficiency of the Complaint (discussed below) and Defendants’
17 default, the Court finds that no genuine dispute of material facts would preclude granting
18 the Motion. And because Defendants were properly served and have never appeared in this
19 case, the Court finds it unlikely that Defendants’ failure to appear and the resulting default
20 was the result of excusable neglect. *See Zekelman*, 2020 WL 1495210, at *4 (“Due to
21 Defendants’ failure to participate, there is no dispute over material facts (except as to
22 damages) and no indication that default is due to excusable neglect.”).

23 The seventh factor—the policy favoring a decision on the merits—generally weighs
24 in favor of denying default judgment because “[c]ases should be decided upon their merits
25 whenever reasonably possible.” *Eitel*, 782 F.2d at 1472. But the mere existence of FRCP
26 55(b) “indicates that this preference, standing alone, is not dispositive.” *PepsiCo, Inc. v.*
27 *Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002) (citation omitted). Moreover,
28 Defendants’ unexplained absence at this juncture of the case makes it impractical, if not

1 impossible, to decide on the merits. *See id.* Thus, the Court is not precluded from entering
2 default judgment against Defendants. *See Emp. Painters’ Tr. v. Ethan Enters., Inc.*, 480
3 F.3d 993, 1000–01 (9th Cir. 2007); *Zekelman*, 2020 WL 1495210, at *4 (citation omitted)
4 (“[T]he default mechanism is necessary to deal with wholly unresponsive parties who
5 could otherwise cause the justice system to grind to a halt. Defendants who appear to be
6 ‘blowing off’ the complaint should expect neither sympathy nor leniency from the court.”).

7 ii. Second, Third, and Fourth *Eitel* Factors

8 The second and third factors—the merits of the claims and the sufficiency of the
9 Complaint—weigh in favor of granting default judgment. “These two factors are often
10 analyzed together and require courts to consider whether a plaintiff has stated a claim on
11 which it may recover.” *Zekelman*, 2020 WL 1495210, at *5 (citation omitted). When the
12 complaint sufficiently states a claim for relief, these factors favor a default judgment. *See*
13 *Danning v. Lavine*, 572 F.2d 1386, 1388–89 (9th Cir. 1978). “Of all the *Eitel* factors, courts
14 often consider the second and third factors to be the most important.” *Zekelman*, 2020 WL
15 1495210, at *5 (citation omitted).

16 An interpleader action allows a stakeholder to (1) protect itself from problems posed
17 by multiple claimants to a single fund and (2) limit litigation expenses. *Mack v.*
18 *Kuckenmeister*, 619 F.3d 1010, 1024 (9th Cir. 2010) (citations omitted). Plaintiff asserts
19 that because multiple parties could have claims to the insurance proceeds, it cannot
20 determine “which claims it may safely pay.” (Doc. 56 at 3). Indeed, exposure to multiple
21 adverse claims for the proceeds of an automobile accident insurance policy is a type of
22 action for which interpleader is appropriate. *See Texas Ins. Co.*, 2023 WL 4746123, at *2
23 (finding interpleader appropriate where multiple competing claims exceeded automobile
24 insurance policy’s limit of liability). Thus, the Court finds that Plaintiff has properly stated
25 a claim for interpleader. Accordingly, the second and third factors weigh in favor of the
26 entry of default judgment.

27 Under the fourth *Eitel* factor, “the court must consider the amount of money at stake
28 in relation to the seriousness of Defendant’s conduct.” *PepsiCo, Inc.*, 238 F. Supp. 2d at

1 1177. This factor is “neutral in interpleader actions because the plaintiff-in-interpleader is
2 not seeking damages.” *Texas Ins. Co.*, 2023 WL 4746123, at *2; *see also Am. Gen. Life*
3 *Ins. Co. v. Durbin*, No. CV 15-4137 FMO (EX), 2016 WL 3583826, at *4 (C.D. Cal. June
4 10, 2016) (same).

5 **c. Relief Sought**

6 Plaintiff seeks to enjoin the Defaulted Defendants from making future claims
7 against Plaintiff or Defendants Ronel, Kazik, and Kurt McKie, whom Plaintiff has a duty
8 to defend, arising out of the car accident or the insurance policy at issue in this action.
9 (Doc. 56 at 6). Because Plaintiff has brought a Rule 22 interpleader action, the Court must
10 determine the propriety of a restraining order by looking “to the standards of 28 U.S.C. §
11 2283, and [Rule] 65, and not to those of statutory interpleader, 28 U.S.C. § 2361.” *Metro.*
12 *Life Ins. Co. v. Probst*, No. CV-09-8180-PCT-DGC, 2009 WL 3740775, at *1 (D. Ariz.
13 Nov. 6, 2009) (citations and quotations omitted). Section 2283 provides that a federal court
14 may stay proceedings in a state court only where “expressly authorized by Act of Congress,
15 or where necessary in aid of its judgment, or to protect or effectuate its judgment.” 28
16 U.S.C. § 2283. Under Rule 65, a court may grant injunctive relief only where the plaintiff
17 shows that it is likely to suffer irreparable harm in the absence of preliminary relief. Fed.
18 R. Civ. P. 65(b); *see Winter v. NRDC*, 555 U.S. 7, 21 (2008); *Am. Trucking Ass'n, Inc. v.*
19 *City of L.A.*, 559 F.3d 1046, 1052 (9th Cir.2009). “This standard is usually met, however,
20 where there is a likelihood of costly and judicially wasteful relitigation of claims and issues
21 that were already adjudicated in federal court.” *Trustees of IL WU-PMA Pension Plan v.*
22 *Peters*, 660 F. Supp. 2d 1118, 1145 (N.D. Cal. 2009)

23 Here, Plaintiff has shown that an injunction is necessary to avoid potential
24 relitigation of the claims and issues involved in this interpleader action. As Plaintiff has
25 shown that two of the Defaulted Defendants—Defendants Lunsford and Russell—
26 previously retained counsel and “made several settlement demands” to Plaintiff before
27 failing to appear in this action (Doc. 32 at 2), there is an actual threat of future relitigation
28 that could jeopardize Plaintiff’s ability to properly apportion the policy amongst the

1 claimants and subject Plaintiff to multiple inconsistent judgments. *See* (Doc. 56 at 4); *see*
2 *also Life Ins. Co. of N. Am. v. Thorngren*, No. CV-04-464-S-BLW, 2005 WL 2387596, at
3 *4 (D. Idaho Sept. 27, 2005) (“[T]he court may restrain a party from filing a duplicative
4 action only when there is an actual threat to either the stakeholder or the proceedings
5 currently before the court.”). To that end, relitigation of the claims would also defeat the
6 purpose of Plaintiff’s interpleader action. *Peters*, 660 F. Supp. 2d at 1145. All told, the
7 Court finds that an injunction should be entered prohibiting Defaulted Defendants from
8 initiating any action in state or federal court asserting a claim to the insurance policy in this
9 action.

10 **III. CONCLUSION**

11 Because the Court has subject matter jurisdiction over this action and personal
12 jurisdiction over the parties, and the application of the *Eitel* factors weighs in favor of the
13 entry of default judgment, the Court will exercise its discretion to grant the Motion for
14 Default Judgment against Defendants Ronel McKie, Kazik McKie, Kurt McKie, Waverly
15 Lunsford, and Zahnijah Russell.

16 Accordingly,

17 **IT IS ORDERED** that Plaintiff’s Motion for Entry of Default Judgment (Doc. 56)
18 against Defendants Ronel McKie, Kazik McKie, Kurt McKie, Waverly Lunsford, and
19 Zahnijah Russell is **granted**.

20 **IT IS FURTHER ORDERED** that the Clerk of Court shall enter judgment
21 permanently enjoining Defendants Ronel McKie, Kazik McKie, Kurt McKie, Waverly
22 Lunsford, and Zahnijah Russell from initiating any proceedings against Safeco Insurance
23 Company of America or Defendants Ronel McKie, Kazik McKie, or Kurt McKie in
24 connection with the automobile accident or insurance policy at issue in this interpleader
25 action.

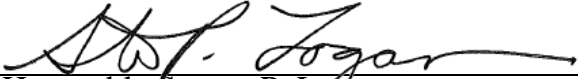
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Dated this 25th day of October, 2024.



Honorable Steven P. Logan
United States District Judge