

1 **WO**

2

3

4

5

6

IN THE UNITED STATES DISTRICT COURT

7

FOR THE DISTRICT OF ARIZONA

8

9

Bharatkumar J. Kapadia,

)

No. 06-CV-1359-PCT-EHC

10

Plaintiff,

)

ORDER

11

vs.

)

12

Edith Thompson; John Czernics;
Paul Czernics; James Hatfield, James
Czernics

)

13

Defendants.

)

14

15

16

Before the Court are Plaintiff’s Motion for Default Judgment (Dkt. 106), Defendant James Czernics’ Motion to Strike (Dkt. 109), and Defendant Edith Thompson’s Motion to Reconsider the Trial Date (Dkt. 110). Plaintiff Bharatkumar J. Kapadia (“Plaintiff” or “Kapadia”) is represented by counsel. Defendants Edith Thompson, John Czernics, Paul Czernics and James Czernics appear *pro se*.¹ Defendant James Hatfield is represented by counsel.

17

18

19

20

21

22

23

24

25

On November 25, 2008, Plaintiff Kapadia filed a “Motion for Entry of Default Judgment” against Defendant James Czernics. (Dkt. 106.) Defendant James Czernics filed a “Motion to Deny and Motion to Strike Plaintiff[’]s Motion to Dismiss James Czernics[,]”

26

¹The Ninth Circuit upholds a “policy of liberal construction in favor of *pro se* litigants.” Rand v. Rowland, 154 F.3d 952, 957 (9th Cir. 1998). Litigants have a statutory right to self-representation in civil matters, see 28 U.S.C. § 1654, and are entitled to meaningful access to the courts. Rand, 154 F.3d at 957 (citations omitted). Consequently, the Court tolerates informalities from civil *pro se* litigants like the Defendants.

1 Defendant in Pro Per” in response to Plaintiff’s motion. (Dkts. 108 & 109.)² Plaintiff filed
2 a “Reply to Defendant James Czernics’ Motion to Deny and Motion to Strike Plaintiff[’]s
3 Motion to Dismiss James Czernics[,] Defendant in Prop Per.” (Dkt. 113.) Defendant Paul
4 Czernics also filed a Response in Opposition to Plaintiff’s Motion for Default Judgment.
5 (Dkt. 114.) Defendant James Czernics filed a “Response to Plaintiff and Supplemental
6 Motion to Deny and Strike Plaintiff[’]s Motion for Default Judgement and Response to
7 Plaintiff[’]s Motions.” (Dkt. 115.) Defendant James Hatfield did not file any responses or
8 objections to the motions mentioned above.

9 **I. Background**

10 The parties dispute the identity of beneficiaries of a life insurance policy. On
11 September 4, 2003, former plaintiff Protective Life Insurance Company (“Protective”) issued
12 a life insurance policy (“Policy”) to Maria E. Hatfield (“Maria”), in the amount of \$100,000.
13 Maria’s children, including Edith Thompson, John Czernics, James Czernics, and Paul
14 Czernics, were originally named in the Policy as the beneficiaries. Maria allegedly amended
15 her Policy and designated Kapadia as the beneficiary. (Dkt. 1, ¶ 13.) After Maria’s death,
16 on February 8, 2006, Kapadia submitted a claim to Protective for the proceeds of the Policy
17 asserting he was the sole beneficiary. (Dkt. 1, ¶ 16.) Edith Thompson, John Czernics, James
18 Czernics, and Paul Czernics, also submitted claims to Protective for the proceeds of the
19 Policy as named beneficiaries when the policy was made. (Dkt. 1, ¶ 17.) James Hatfield,
20 Maria’s former husband, alleges that the Policy premiums were paid with community
21 property funds and he is the sole beneficiary of the Policy, although he was never named as
22 a beneficiary. (Dkt. 13 at 1.)

23 Protective filed a Complaint in Interpleader. (Dkt. 1.) Kapadia, Edith Thompson,
24 James Hatfield, John Czernics, and Paul Czernics filed answers. (Dkts. 8, 11, 13, 21, & 22.)
25 After depositing the disputed funds with the Court, Protective was dismissed from this
26

27 ²Docket numbers 108 and 109 are the same document, although one is designated as
28 a Response and the other as a Motion.

1 interpleader action and discharged from liability, on December 4, 2006. (Dkt. 36.) Kapadia,
2 previously a defendant, by Court order was named the sole plaintiff in the case, on July 23,
3 2007. (Dkt. 45.)

4 **II. Plaintiff's Motion for Default Judgment**

5 A clerk's entry of default was entered against James Czernics, on August 30, 2006,
6 for failure to answer Protective Life Insurance Company's Complaint in Interpleader. (Dkt.
7 23.) Plaintiff now seeks a default judgment against Defendant James Czernics. (Dkt. 106.)

8 Plaintiff argues that "Defendant James Czernics should be removed as a party to this
9 litigation and an Order should be entered precluding him from any recovery." (Dkt. 106 at
10 2.) Plaintiff offers no legal support for this argument. Plaintiff further notes that "the
11 remaining parties to this lawsuit have reached [a settlement] agreement," which is attached
12 to Plaintiff's motion. (Id.)

13 Defendant James Czernics argues that Plaintiff has failed to copy him to any
14 disclosures, motions, or pleadings, making it impossible for him to participate, although he
15 is a party to this action. (Dkt. 115.) Defendant James Czernics also asserts that he has
16 appeared at every hearing in this action. (Id.) Defendant Paul Czernics argues that James
17 Czernics is a litigant to this action and notes that the Court may set aside an entry of default
18 for good cause. (Dkt. 114.) Defendants James Czernics and Paul Czernics further assert that
19 a settlement agreement has not been reached and correctly note that the "agreement" attached
20 to Plaintiff's motion is not signed. (See Dkts. 114 & 115.)

21 Entry of default judgment is governed by Federal Rule of Civil Procedure 55 and is
22 left to the Court's sound discretion. Philip Morris USA, Inc. v. Catworld Products, Inc., 219
23 F.R.D. 494, 498 (C.D. Cal. 2003) (citing Aldabe v. Aldabe, 616 F.2d 1089, 1092 (9th Cir.
24 1980)). Because granting or denying relief is entirely within the Court's discretion, a
25 defendant's default does not automatically entitle a plaintiff to a court ordered judgment. See
26 Id. The Court has considerable leeway as to what it may require as a prerequisite to the entry
27 of a default judgment, pursuant to Rule 55. The Court may consider the following factors
28 in exercising its discretion to award a default judgment:

1 (1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff's
2 substantive claim, (3) the sufficiency of the complaint, (4) the sum of money
3 at stake in the action; (5) the possibility of a dispute concerning material facts;
4 (6) whether the default was due to excusable neglect, and (7) the strong policy
5 underlying the Federal Rules of Civil Procedure favoring decisions on the
6 merits.

7 Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir.1986).

8 According to Federal Rule of Civil Procedure 54(b), “when multiple parties are
9 involved, the court may direct entry of a final judgment as to one or more, but fewer than all,
10 claims or parties **only if** the court expressly determines that there is no just reason for delay.”
11 Fed.R.Civ.P. 54(b) (emphasis added). The controlling case on whether default judgment
12 should be entered when there are multiple defendants is Frow v De La Vega, 82 U.S. 552
13 (1872). “The Court held in Frow that, where a complaint alleges that defendants are jointly
14 liable and one of them defaults, judgment should not be entered against the defaulting
15 defendant until the matter has been adjudicated with regard to all defendants.” Nielson v.
16 Chang (In re First T.D. & Inv. Inc.), 253 F.3d 520, 532 (9th Cir. Cal. 2001) (citing Frow, 82
17 U.S. at 554-55).

18 The Ninth Circuit has interpreted the rule in Frow to apply to defendants who have
19 closely related defenses or are otherwise similarly situated, even if not jointly and severally
20 liable. Id. at 532 (citing Gulf Coast Fans, Inc. v. Midwest Elecs. Imps., Inc., 740 F.2d 1499,
21 1512 (11th Cir. 1984)). Judgment should not be entered against one defendant until the
22 matter has been adjudicated with regard to all defendants, if judgment would produce
23 “logically inconsistent judgments in the same action.” Chang, 253 F.3d at 532; see also
24 Shanghai Automation Instrument Co. v. Kuei, 194 F.Supp.2d (N.D.Cal. 2001) (noting that
25 if the liability of all the defendants is uniform then the Court should not enter default
26 judgment against one defendant until the matter has been adjudicated with regard to all
27 defendants).

28 Here, Defendants Paul Czernics, Edith Thompson, John Czernics, and James Czernics
are similarly situated. Defendants argue that they are joint beneficiaries of the Policy. If the
Court finds in favor of Defendants Paul Czernics, Edith Thompson, and John Czernics, who

1 answered the original complaint, then the Court would also likely find in favor of Defendant
2 James Czernics, which would be inconsistent with a default judgment against him.

3 In addition, the Complaint does not set forth any facts that would support a judgment
4 in Plaintiff's favor. Entry of default judgment is proper if the facts established by the default
5 support the cause of action pled in the complaint. See TeleVideo Systems, Inc. v.
6 Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987) (explaining that when a default has been
7 entered, the factual allegations of the complaint must be considered true). Here, the Plaintiff
8 and the Defendants were originally named as co-defendants in an interpleader action. The
9 complaint, which Defendant James Czernics failed to answer, was a Complaint in
10 Interpleader, and it does not set forth any facts that would justify a judgment in Plaintiff's
11 favor.

12 Further, Plaintiff does not allege and the Court does not see any prejudice to the
13 Plaintiff if default is not entered. Plaintiff merely asserts that default judgment should be
14 entered because there is a clerk's entry of default. Plaintiff fails to support this argument.
15 Therefore, Plaintiff fails to persuade the Court to enter default judgment against Defendant
16 James Czernics.

17 **III. Defendant James Czernics' Motion to Strike**

18 Defendant James Czernics filed a "Motion to Deny and Motion to Strike Plaintiffs
19 Motion to Dismiss James Czernics Defendant in prop per." (Dkt. 108.) The Court construes
20 Defendant's motion as a motion to set aside the entry of default. See Rand, 154 F.3d at 957
21 (the Ninth Circuit upholds a "policy of liberal construction in favor of *pro se* litigants").

22 An entry of default cuts off a defendant's right to appear in an action or present
23 evidence. Clifton v Tomb, 21 F.2d 893, 897 (4th Cir. 1927); see also Great American Ins.
24 Co. V. M.J. Menefee Const., Inc., 2006 WL 2522408, *2 (E.D.Cal. 2006) (the Clerk of
25 Court's entry of default cuts off Defendant's right to appear in the action, file counterclaims,
26 or to present evidence). A defendant, however, may file a motion to set aside the default,
27 pursuant to Federal Rule of Civil Procedure 55(c).
28

1 The Court may set aside an entry of default “for good cause.” Fed.R.Civ.P. 55(c).
2 Whether to set aside the entry of default is within the Court’s discretion. Savarese v. Edrick
3 Transfer & Storage, Inc., 513 F.2d 140, 146 (9th Cir. 1975). The Court may consider the
4 following factors: (1) whether James Czernics engaged in culpable conduct that led to the
5 default; (2) whether setting aside the entry of default would prejudice Kapadia; and (3)
6 whether James Czernics has a meritorious defense. Franchise Holding II, LLC v. Huntington
7 Rest.’s Group, Inc., 375 F.3d 922, 926 (9th Cir. 2004).

8 Here, the Court finds good cause to set aside Defendant James Czernics’ entry of
9 default. James Czernics has personally appeared at several of the hearings in this action,
10 including the settlement conference before the Magistrate Judge, and claims to be “a very
11 active litigant in this case.” (See Dkts. 39, 55, 99, 101, & 115 at 2.) It appears from James
12 Czernics’ motion and response that, as a *pro se* litigant, he did not fully understand his
13 responsibility regarding the Complaint in Interpleader or the consequences of his failure to
14 individually answer the Complaint. James Czernics also claims that because he lives in a
15 rural area “where there is no mail delivery to street addresses[,] only post office boxes,” it
16 is difficult for him to respond in a proper manner and participate. (Dkt. 108 at 1.) He has
17 relied upon his co-defendant siblings for information regarding this action. (Dkt. 115 at 1.)
18 In addition, setting aside the default will not prejudice Kapadia and will support the strong
19 policy favoring a decision on the merits.

20 **IV. Defendant Edith Thompson’s Motion for Reconsideration of Trial Date**

21 Having considered the Defendants’ proposed dates, the potential scheduling conflicts
22 of the parties, and the Court’s calender, the Court set the bench trial for January 15, 2009 and
23 final pretrial conference for January 8, 2009. (Dkt. 105.) Defendant Edith Thompson filed
24 a Motion for Reconsideration of Trial Date, requesting that the Court move the trial date to
25 January 26, 2009 and final pretrial conference to January 19, 2009. (Dkt. 110.) Thompson
26 requests that the Court move the trial date and final pretrial conference because she will be
27 out of the country for the January 8th final pretrial conference. (Id. at 2.)
28

1 Plaintiff expressed “no objection to a continuance of the trial date until late January,
2 2009 or the first available date thereafter.” (Dkt. 112.) Defendant Paul Czernics informed
3 the Court that “Pro Se Defendants are eager to move forward to Trial” and requests that “a
4 January Trial date should not be compromised...” (Dkt. 114 at 2.) Defendant James Czernics
5 also states that he “does not want, for any reason[,] the date for trial[] to be delayed any
6 longer.” (Dkt. 115 at 3.)

7 Thompson will be out of the country until January 13, 2009. The bench trial is set for
8 January 15, 2009. The Court is unable to move the final pretrial conference and trial without
9 further postponing the trial. Thompson may appear at the January 8, 2009 final pretrial
10 conference by telephone, according to the Court’s November 18, 2008 Order.

11 Accordingly,

12 **IT IS ORDERED** that Plaintiff’s “Motion for Entry of Default Judgment” (Dkt. 106)
13 is **denied**.

14 **IT IS FURTHER ORDERED** that Defendant James Czernics’ Motion to Strike
15 (Dkt. 109), construed as a Motion to Set Aside Entry of Default, is **granted**.

16 **IT IS FURTHER ORDERED** that the Clerk’s Entry of Default against Defendant
17 James Czernics (Dkt. 23) shall be set aside, pursuant to Federal Rule of Civil Procedure
18 55(c).

19 **IT IS FURTHER ORDERED** that Plaintiff Bharatkumar J. Kapadia’s counsel must
20 send to Defendant James Czernics copies of all pleadings, motions, and/or disclosures filed
21 by Plaintiff in this action, pursuant to the Local and Federal Rules of Civil Procedure.

22 **IT IS FURTHER ORDERED** that Defendant Edith Thompson’s Motion for
23 Reconsideration of Trial Date (Dkt. 110) is **denied**.

24 **IT IS FURTHER ORDERED** that the parties may appear at the Final Pretrial
25 Conference telephonically, according to the Court’s November 18, 2008 Order (Dkt. 105).

26 **IT IS FURTHER ORDERED** that Defendants Edith Thompson, James Czernics,
27 and John Czernics and Plaintiff Bharatkumar J. Kapadia shall file any pretrial disclosures,
28

1 pursuant to Federal Rule of Civil Procedure 26(a)(3) and the Court's November 18, 2008
2 Order.³

3 DATED this 15th day of December, 2008.

4
5
6
7
8 

9

10 Earl H. Carroll
11 United States District Judge
12
13
14
15
16
17
18
19
20
21
22
23
24
25

26

27 ³Final pretrial disclosures were due on November 28, 2008. (Dkt. 105) Only
28 Defendants James Hatfield and Paul Czernics filed timely pretrial disclosures. (See Dkts.
107 & 111.)