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**United States District Court
Central District of California**

EDVIN PETER HANSEN, et al.,

Plaintiffs,

v.

INTEGRITY ASSETS LLC, et al.,

Defendants.

Case No. 2:21-cv-03994-ODW (RAOx)

**ORDER DENYING PLAINTIFFS’
MOTION FOR ENTRY OF
DEFAULT JUDGMENT [22]**

I. INTRODUCTION

Plaintiffs Edvin Peter Hansen, Steen Hansen, and Lars Hansen (“Lenders”) initiated this contract action against Defendants Integrity Assets, LLC; Alloy Element Assets, LLC; and Integrity Longevity Investments, LLC, (“Borrowers”) based on Borrowers’ failure to repay loans. (Compl., ECF No. 1.) Borrowers have not appeared and Lenders now move for entry of default judgment. (Mot. Default J. (“Motion” or “Mot.”), ECF No. 22.) For the reasons discussed below, the Court **DENIES** Lenders’ Motion.¹

¹ After carefully considering the papers filed in support of the Motion, the Court deemed the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15.

II. BACKGROUND

Between 2015 and 2018, individual Lenders loaned individual Borrowers over \$2,000,000 in seven separate loans (collectively, the “Loans”). (Compl. ¶¶ 1, 13–20.) For each loan, the Borrower drafted a loan contract that included a Note Purchase Agreement, a Promissory Note, a Security Agreement, and a Collateral Agency Agreement. (*Id.* ¶¶ 14–20, 29, Exs. 1–7 (“Loan Contracts”), ECF Nos. 1-1 to 1-7.) Loans One through Six matured after six months and Loan Seven matured after three years. (*See id.* ¶¶ 14–20.) The Loans accrued interest at an annual rate of 10%, based on a 360-day year. (*See, e.g.*, Loan Contract One Ex. C (“Promissory Note”) § 2(a).) The following chart summarizes the principal Loans:

Loan No.	Contract Date	Plaintiff Lender	Defendant Borrower	Loan Amount	Maturity Date
One	12/17/15	Lars Hansen	Integrity Longevity	\$300,000.00	06/17/16
Two	12/06/17	Edvin Hansen	Integrity Assets	\$550,000.00	06/06/18
Three	12/10/17	Edvin Hansen	Integrity Assets	\$160,000.00	06/10/18
Four	12/23/17	Edvin Hansen	Integrity Assets	\$60,000.00	06/23/18
Five	04/24/18	Steen Hansen	Integrity Assets	\$325,000.00	10/24/18
Six	09/26/18	Edvin Hansen	Integrity Assets	\$100,000.00	03/26/19
Seven	12/01/18	Edvin Hansen	Alloy Element	\$636,314.46	12/01/21
			Total Principal	\$2,131,314.46	

(Compl. ¶ 21.) The Loan Contracts each appoint Coral Gables Title and Escrow Inc. (“Coral Gables”), a Florida Corporation, as Collateral Agent with exclusive authority to enforce the Loan Contracts on Lenders’ behalf in the event of Borrowers’ default. (*Id.* ¶ 22; *see, e.g.*, Loan Contract One Ex. E (“Collateral Agency Agreement”) § 2.1.) The State of Florida administratively dissolved Coral Gables in September 2015, prior to execution of the first Loan. (Compl. ¶ 29, Ex. 8, ECF No. 1-8.)

1 Borrowers defaulted on the respective Loans by failing to make timely interest
2 payments and, for Loans One through Six, failing to repay the outstanding principal by
3 each loan’s respective maturity date. (*Id.* ¶¶ 23, 27.) In November 2020, Lenders sent
4 Borrowers a written demand to cure the default. (*Id.* ¶ 24.) In January 2021, Lenders
5 sent Borrowers an Acceleration Notice declaring the unpaid principal and interest
6 immediately due. (*Id.* ¶ 26.) Defendants made some payments in 2021, but these were
7 insufficient to bring the loans current. (*Id.* ¶ 31.) Borrowers also have not returned the
8 outstanding principal due on the Loans that had matured or been accelerated. (*Id.*)

9 Lenders seek to enforce the Loan Contracts. Coral Gables is defunct and is thus
10 incapable of acting as Lenders’ Collateral Agent, so Lenders filed this action
11 themselves. (*See id.* ¶ 29.) Lenders assert a single claim for breach of contract and one
12 for breach of the implied covenant of good faith and fair dealing, lumping all seven
13 Loans together despite the varying contracting parties and maturity dates, and despite
14 Loan Seven not maturing until months after Lenders initiated this action. (*See id.* ¶¶ 31–
15 44.) Lenders seek compensatory and consequential damages of at least \$2,131,314.46,
16 plus interest, fees, and costs, although they do not allege what interest and principal any
17 individual Borrower has paid on any specific Loan. (*See id.*, Prayer for Relief.)
18 Borrowers have not appeared in these proceedings and Lenders now move for entry of
19 default judgment against them. (*See Mot.*)

20 III. LEGAL STANDARD

21 Federal Rule of Civil Procedure (“Rule”) 55(b) authorizes a district court to grant
22 a default judgment after the Clerk enters default under Rule 55(a). Before a court can
23 enter a default judgment against a defendant, the plaintiff must satisfy the procedural
24 requirements set forth in FRCP 54(c) and 55, as well as Local Rules 55-1 and 55-2.
25 Fed. R. Civ. P. 54(c), 55; C.D. Cal. L.R. 55-1, 55-2. If these procedural requirements
26 are satisfied, a district court has discretion to enter default judgment. *Aldabe v. Aldabe*,
27 616 F.2d 1089, 1092 (9th Cir. 1980).

1 “[A] defendant’s default,” however, “does not automatically entitle the plaintiff
2 to a court-ordered judgment.” *PepsiCo, Inc., v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172,
3 1174 (C.D. Cal. 2002). Instead, courts are to exercise discretion in entering default
4 judgment, using the factors in *Eitel v. McCool*, 782 F.2d 1470, 1471–72 (9th Cir. 1986)
5 (the “*Eitel* factors”) as a guide. Generally, after the Clerk enters default, the Court
6 accepts as true the well-pleaded factual allegations in the complaint relating to a
7 defendant’s liability. *See TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917–18
8 (9th Cir. 1987) (per curiam). The court must evaluate whether the well-pleaded factual
9 allegations establish liability and, if so, then determine the “amount and character” of
10 the appropriate relief. *Landstar Ranger, Inc. v. Parth Enters., Inc.*, 725 F. Supp. 2d 916,
11 919 (C.D. Cal. 2010). The plaintiff must provide proof of all damages sought and may
12 not recover a judgment different in kind or amount from the complaint. *See TeleVideo*
13 *Sys.*, 826 F.2d at 917–18; Fed. R. Civ. P. 54(c)).

14 IV. DISCUSSION

15 Lenders fail to establish, in their Complaint or Motion, that entry of default
16 judgment against Borrowers is appropriate. Additionally, Lenders fail to establish or
17 prove the damages they seek. Therefore, the Court declines to enter default judgment
18 and provides Lenders with an opportunity to amend the Complaint and attempt to
19 remedy the deficiencies identified herein.

20 A. Personal Jurisdiction

21 As a threshold matter, the Court must ensure its jurisdiction over this action and
22 Borrowers. However, it is unclear from the present record that the exercise of personal
23 jurisdiction over Borrowers would be appropriate.

24 “A district court’s exercise of jurisdiction over a nonresident defendant comports
25 with due process when the defendant has at least ‘minimum contacts’ with the forum
26 and subjecting the defendant to an action in that forum would ‘not offend traditional
27 notions of fair play and substantial justice.’” *Ayla, LLC v. Alya Skin Pty. Ltd.*, 11 F.4th
28 972, 979 (9th Cir. 2021) (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316

1 (1945)). In cases sounding in contract, like this one, courts most often use a purposeful
2 availment analysis to evaluate personal jurisdiction. *Schwarzenegger v. Fred Martin*
3 *Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004). The plaintiff must “show[] that a
4 defendant purposefully availed himself of the privilege of doing business in” the forum,
5 typically with “evidence of the defendant’s actions in the forum, such as executing or
6 performing a contract there.” *Id.* “[M]erely contracting with a resident of the forum
7 state is insufficient.” *Ziegler v. Indian River Cnty.*, 64 F.3d 470, 473 (9th Cir. 1995).

8 From the record before the Court, it does not appear that Borrowers purposefully
9 availed themselves of the privilege of doing business in California. Thus, the Court
10 cannot find that exercising personal jurisdiction over Borrowers comports with due
11 process. The Court denies the Motion on this basis.

12 **B. *Eitel* Factors**

13 Lenders’ Motion also fails under the *Eitel* factors. In *Eitel*, the Ninth Circuit
14 enumerated seven factors that a court may consider in determining whether to grant
15 default judgment. 782 F.2d at 1471–72. The second and the third factors, the merits of
16 plaintiff’s claim and the complaint’s sufficiency, are generally the most significant and
17 are often dispositive. *See, e.g., Kong v. Image of Beverly Hills, LLC*, No. 2:20-cv-
18 02175-ODW (MRWx), 2020 WL 6701441, at *3 (C.D. Cal. Nov. 13, 2020). This is
19 the case here, as Lenders’ Motion fails under the second and third *Eitel* factors and the
20 Court does not reach the remaining factors.

21 Together, the second and third *Eitel* factors “require that a plaintiff state a claim
22 on which the [plaintiff] may recover.” *Philip Morris USA, Inc. v. Castworld Prods.,*
23 *Inc.*, 219 F.R.D. 494, 499 (C.D. Cal. 2003) (alteration in original) (quoting *PepsiCo,*
24 238 F. Supp. 2d at 1175). To weigh these factors, the Court evaluates the merits of each
25 claim.

26 Lenders assert two causes of action, (1) breach of contract and (2) breach of the
27 implied covenant of good faith and fair dealing. (Compl. ¶¶ 32–44.) Applying
28 California law, Lenders contend they have adequately stated both claims. (*See* Mot. 4.)

1 However, each of the Loan Contracts contains express choice-of-law provisions
2 identifying Georgia, Florida, and Delaware law as governing matters relating to or
3 arising from the agreements.² Lenders do not address the choice of law issue or explain
4 why the Court should apply California law instead of the contractually chosen law.

5 To determine whether contractual choice of law provisions are enforceable,
6 California courts must first determine whether “(1) the chosen state has a substantial
7 relationship to the parties or their transaction, or (2) whether there is any other
8 reasonable basis for the parties’ choice of law.” *Nedlloyd Lines B.V. v. Superior Court*,
9 3 Cal. 4th 459, 466 (1992). If either test is met, the party opposing the chosen law must
10 then “establish both that the chosen law is contrary to a fundamental policy of California
11 and that California has a materially greater interest in the determination of the particular
12 issue.” *Wash. Mut. Bank, FA v. Superior Court*, 24 Cal. 4th 906, 917 (2001). If the
13 choice-of-law opponent fails to meet this burden, the contractually chosen law should
14 be applied. *See Nedlloyd*, 3 Cal. 4th at 466.

15 Borrowers are Georgia, Delaware, and Florida limited liability companies with
16 members who are citizens of Florida, (*see* Resp. 3–5, ECF No. 19), so there appears to
17 be a substantial relationship between the chosen state law, on one hand, and the parties
18 and their transactions, on the other hand. The burden is therefore on Lenders to show
19 that California law should apply.

20 However, Lenders fail to address the choice of law issue at all, let alone establish
21 that the contractually chosen law is contrary to fundamental policy of California or that
22 California has a materially greater interest in resolution of Lenders’ claims. The Court
23 declines to conduct the choice-of-law analysis for Lenders. Accordingly, Lenders’
24 Motion, which is brought entirely under California law, fails to show entitlement to
25 relief.

26
27 ² Loan Contract One selects Georgia law (Ex. A § 10), Delaware law (Exs. C § 7(f), D § 14), and
28 Florida law (Ex. E § 6.6(a)) as governing matters arising from the various Loan One agreements. Loan
Contracts Two through Six select Georgia law. (*See* Exs. A § 10, B § 7(f), D § 14, E § 6.6(a).) Loan
Contract Seven selects Florida law. (*See* Exs. A § 10, B § 7(f), D § 14, E § 6.6(a).)

1 In light of the above deficiencies, the Court finds that the second and third *Eitel*
2 factors weigh against entering default judgment. The Court denies the Motion on this
3 additional basis.³

4 **C. Relief Sought**

5 Lenders' Motion is also deficient in its request for relief. Lenders seek to recover
6 unpaid interest and principal on the seven Loans but submit *no evidence* to substantiate
7 the amounts they claim have been paid or the amounts they claim remain owing.
8 Additionally, Lenders request entry of default judgment based on six months' overdue
9 interest on all seven Loans, accruing from March 2021 through August 2021 (when
10 Lenders filed this action). (*See* Mot. 6–9.) However, Lenders' claim that Borrowers
11 made no interest payments after March 2021 is contradicted by Lenders' allegation that
12 Lenders received at least some interest payments from some Borrowers after that date.
13 (*See* Mot. 6–9; Compl. ¶ 31.) Lenders do not specify the amounts of these payments,
14 clarify which Borrowers made them or on which Loans, or explain whether these
15 payments were applied to principal or interest and on what basis. The Court finds these
16 failures particularly troublesome as this action involves three Borrowers, three Lenders,
17 and seven separate Loans with varying dates of execution and maturity. Based on the
18 current record, the Court is unable to determine the loan amounts (principal or interest)
19 due and owing, i.e., Lenders' damages.

20 **D. Attorneys' Fees**

21 In light of the above discussion, and Lenders' failure to offer any legal authority
22 to support their entitlement to fees, the Court denies Lenders' request for fees and costs.

23 **V. CONCLUSION**

24 For the reasons discussed above, the Court **DENIES** Lenders' Motion for Entry
25 of Default Judgment, (ECF No. 22), and **SETS ASIDE** the Default entered against
26

27 ³ Also, Lenders have provided no legal authority for the proposition that they are excused from the
28 obligation to enforce the Loan Contracts through the defunct Coral Gables, whether based on
impossibility, severance, or some other doctrine.

1 Borrowers, (ECF No. 17). Lenders may file an amended complaint addressing the
2 deficiencies herein **within 30 days** of the date of this Order. Lenders shall serve the
3 summons and amended complaint on Borrowers within ten days of filing the amended
4 complaint with the Court and shall promptly file proof of such service. Failure to timely
5 file an amended complaint or proof of service may result in dismissal of this action.

6
7 **IT IS SO ORDERED.**

8
9 December 20, 2021

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12 _____
13 **OTIS D. WRIGHT, II**
14 **UNITED STATES DISTRICT JUDGE**