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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ELI LILLY AND COMPANY,

Plaintiff,

v.

JOHN DEREK GITMED, et al.,

Defendants.

Case No. 1:16 -cv-00178-DAD-SAB

ORDER REQUIRING PLAINTIFF TO
SUPPLEMENT APPLICATION FOR
ENTRY OF DEFAULT JUDGMENT

FIVE-DAY DEADLINE

Currently, this action is proceeding against Defendant John Gitmed with default having been entered against Defendant Anthony Pollino, Jr. On February 8, 2017, Plaintiff filed an application for entry of default judgment against Defendant Anthony Pollino, Jr.

While Plaintiff addresses entry of default judgment pursuant to Rule 55 of the Federal Rules of Civil Procedure, Plaintiff has not addressed whether it would be appropriate to enter judgment against one defendant while this action continues on the same claims against a co-defendant. Rule 54 of the Federal Rules of Civil Procedure provides that where an action is brought alleging more than one claim or is against more than one party, the Court may direct entry of final judgment against fewer than all claims or parties only if the Court expressly determines that there is no just reason for delay. Fed. R. Civ. P. 54(b).

The leading case on the issue of default judgment in actions involving multiple defendants is Frow v. De La Vega, 15 Wall. 552, 82 U.S. 552 (1872). In re First T.D. & Inv.,

1 Inc., 253 F.3d 520, 532 (9th Cir. 2001). In Frow, the Supreme Court held that “where a
2 complaint alleges that defendants are jointly liable and one of them defaults, judgment should
3 not be entered against the defaulting defendant until the matter has been adjudicated with regard
4 to all defendants.” In re First T.D., 253 F.3d at 532. The possibility of inconsistent judgments
5 must be avoided. Id. Courts have extended this rule to apply to situation where the defendants
6 are similarly situated, even when they are not jointly and severally liable. Id. at 532. Further,
7 even if a judgment could be entered into on the issue of liability, the issue arises as to whether
8 entry of damages should be postponed until the claims against all defendants are resolved.
9 Shanghai Automation Instrument Co. v. Kuei, 194 F. Supp. 2d 995, 1012 (N.D. Cal. 2001).
10 Plaintiff’s application for entry of default judgment does not address whether there is no just
11 reason for delay when this action continues against Defendant Gitmed.

12 Accordingly, IT IS HEREBY ORDERED that, within five days from the date of entry of
13 this order, Plaintiff shall file a supplemental brief addressing why there is no just reason for
14 delay to enter final judgment as to only one of the defendants in this action.

15 IT IS SO ORDERED.

16 Dated: March 3, 2017

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19 UNITED STATES MAGISTRATE JUDGE
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