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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ASCENTIUM CAPITAL, LLC,) Case No.: 1:16-cv-00356 LJO JLT
)
Plaintiff,) FINDINGS AND RECOMMENDATIONS
) GRANTING PLAINTIFF’S MOTION FOR
v.) DEFAULT JUDGMENT
)
GURMINDER SINGH, et al.,) (Doc. 27)
)
Defendants.)
)

Ascentium Capital, LLC seeks default judgment against the defendants. (Doc. 27) The defendants have not opposed this motion. For the following reasons, the Court recommends Plaintiff’s motion for default judgment be **GRANTED**.

I. Background¹

In this action, the plaintiff alleges that on July 1, 2014, the plaintiff loaned money to Gurminder Singh allow him to purchase two utility trailers. (Doc. 2 at 3) Singh agreed to repay the loan by making 60 monthly payments. *Id.* The parties executed a written finance agreement to memorialize their transaction. (Doc. 2 at 13-15)

On May 15, 2015, Singh assigned the finance agreement to Blujay Transport Inc. (Doc. 2 at 4, 17-19) However, the assignment required that Singh remain liable under the original finance

¹ The factual assertions of the plaintiff are taken as true because default has been entered against the defendants. See *Pope v. United States*, 323 U.S. 1, 22 (1944).

1 agreement. (Doc. 2 at 17) On behalf of Blujay, Jaswinder Bhangoo personally guaranteed repayment
2 of the amount owed under the assigned finance agreement. (Doc. 2 at 4, 20) Despite the plaintiff's
3 performance under the contract, Singh, Blujay and Bhangoo failed to make the payments after June
4 2015. (Doc. 2 at 3, 4) Though the plaintiff demanded repayment, Singh, Blujay and Bhangoo have
5 failed to comply. Id. Thus, they owe the plaintiff \$84,336.48 plus interest and late payment charges.
6 Id. at 3-4.

7 On September 1, 2014, the plaintiff again made a loan to Singh to purchase two more utility
8 trailers. (Doc. 2 at 5) Once again, the parties entered into a written finance agreement in which Singh
9 agreed to repay the loan in 60 monthly installments. Id. at 5, 22-24. In May 2015, Singh assigned this
10 loan to Blujay. Id. at 5, 26-27. Again, Singh remained liable for compliance with the finance
11 agreement according to the assignment agreement. Id. at 26-27. As in the other loan, Bhangoo agreed
12 to guarantee the loan personally. Id. at 6, 29.

13 Despite the plaintiff's performance under the contract, Singh, Blujay and Bhangoo failed to
14 make the payments after June 2015. (Doc. 2 at 5, 6) Though the plaintiff demanded repayment, Singh,
15 Blujay and Bhangoo have failed to comply. Id. Thus, they owe the plaintiff \$94,733.52 plus interest
16 and late payment charges. Id.

17 Again on November 1, 2014, the plaintiff made a loan to Singh to purchase two more utility
18 trailers. (Doc. 2 at 6, 31-32) This loan also required him to repay the amount in 60 monthly payments.
19 Id. at 6-7, 31-32. Singh also assigned this loan to Blujay whose obligations under the assignment were
20 guaranteed by Bhangoo. Id. at 7, 8, 34-35, 37. Under the terms of the assignment, Singh remained
21 responsible for repayment of the loan. Id. at 34-35. The defendants failed to repay this loan despite the
22 plaintiff's performance under the agreement and despite demands for repayment. Id. Thus, they owe the
23 plaintiff \$94,733.52 plus interest and late payment charges. Id.

24 In addition to repayment of the loans, in this action, the plaintiff seeks to recover possession of
25 the trailers based upon liens it placed on the trailers in connection with the finance agreements. (Doc. 2
26 at 8, 39-44) Despite that the plaintiff have demanded the defendants to turn over the trailers, they have
27 failed to do so. Id. at 8-9. Thus, the plaintiff claims also that the defendants have wrongfully converted
28 the trailers and, as a result, the plaintiff is entitled to the fair market value of the trailers in the amount

1 of \$135,000. *Id.* at 9.

2 **II. Legal Standards Governing Entry of Default Judgment**

3 The Federal Rules of Civil Procedure govern the entry of default judgment. After default is
4 entered because “a party against whom a judgment for relief is sought has failed to plead or otherwise
5 defend,” the party seeking relief may apply to the court for a default judgment. Fed. R. Civ. P. 55(a)-
6 (b). Upon the entry of default, well-pleaded factual allegations regarding liability are taken as true, but
7 allegations regarding the amount of damages must be proven. *Pope v. United States*, 323 U.S. 1, 22
8 (1944); see also *Geddes v. United Financial Group*, 559 F.2d 557, 560 (9th Cir. 1977). In addition,
9 “necessary facts not contained in the pleadings, and claims which are legally insufficient, are not
10 established by default.” *Cripps v. Life Ins. Co. of North Am.*, 980 F.2d 1261, 1267 (9th Cir. 1992)
11 (citing *Danning v. Lavine*, 572 F.2d 1386, 1388 (9th Cir. 1978)).

12 Entry of default judgment is within the discretion of the Court. *Aldabe v. Aldabe*, 616 F.2d
13 1089, 1092 (9th Cir. 1980). The entry of default “does not automatically entitle the plaintiff to a court-
14 ordered judgment. *Pepsico, Inc. v. Cal. Sec. Cans*, 238 F.Supp.2d 1172, 1174 (C.D. Cal 2002), accord
15 *Draper v. Coombs*, 792 F.2d 915, 924-25 (9th Cir. 1986). The Ninth Circuit determined:

16 Factors which may be considered by courts in exercising discretion as to the entry of a
17 default judgment include: (1) the possibility of prejudice to the plaintiff, (2) the merits of
18 plaintiff’s substantive claim, (3) the sufficiency of the complaint, (4) the sum of money
19 at stake in the action, (5) the possibility of a dispute concerning material facts, (6)
whether the default was due to excusable neglect, and (7) the strong policy underlying
the Federal Rules of Civil Procedure favoring decisions on the merits.

20 *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986). As a general rule, the issuance of default
21 judgment is disfavored. *Id.* at 1472.

22 **III. Discussion and Analysis**

23 Applying the factors articulated by the Ninth Circuit in *Eitel*, the Court finds the factors weigh
24 in favor of granting Plaintiff’s motion for default judgment.

25 **A. Prejudice to Plaintiff**

26 The first factor considers whether the plaintiff would suffer prejudice if default judgment is not
27 entered. See *Pepsico, Inc.*, 238 F. Supp. 2d at 1177. Generally, where default has been entered against
28 a defendant, a plaintiff has no other means by which to recover damages. *Id.*; *Moroccanoil, Inc. v.*

1 Allstate Beauty Prods., 847 F. Supp. 2d 1197, 1200-01 (C.D. Cal. 2012). Therefore, the Court finds the
2 plaintiff would be prejudiced if default judgment is not granted.

3 **B. Merits of the plaintiff's claims and the sufficiency of the complaint**

4 Given the relationship between these factors, the Court considers the merits of the plaintiff's
5 substantive claims and the sufficiency of the complaint together. See Premier Pool Mgmt. Corp. v.
6 Lusk, 2012 U.S. Dist. LEXIS 63350, at *13 (E.D. Cal. May 4, 2012). The Ninth Circuit has indicated
7 that, when combined, these factors require a plaintiff to "state a claim on which the plaintiff may
8 recover." Pepsico, Inc., 238 F. Supp. 2d at 1175. Notably a "defendant is not held to admit facts that
9 are not well-pleaded or to admit conclusions of law." DIRECTV, Inc. v. Huynh, 503 F.3d 847, 854
10 (9th Cir.2007).

11 1. Breach of contract

12 To demonstrate a breach of contract, the plaintiff must prove the existence of a contract, breach,
13 damages and that the plaintiff performed under the contract. Oasis West Realty, LLC v. Goldman, 51
14 Cal.4th 811, 821 (2011). In its complaint, the plaintiff has demonstrated the existence of three financing
15 contracts between it and Singh and three assignments of the finance agreements to Blujay. (Doc. 2 at 3-
16 4, 5-6, 7-8) In addition, the plaintiff alleges that Singh and Blujay failed to make payments on the
17 contracts. Id. The complaint shows also that the plaintiff performed under the contracts. Id. Finally,
18 the plaintiff has alleged it suffered losses of \$84,336.48 plus interest and late charges in the amount of
19 \$1,581.30 on the first contract and \$94,733.52 plus interest and late charges of \$1,671.75 on the last two
20 contracts. Id. Thus, the plaintiff has established the elements for breaches of contract.

21 2. Breach of guaranty

22 To establish the breach of a guaranty, the plaintiff must show the same elements as with a
23 breach of contract. Oasis, at 821. The plaintiff alleged that as to each finance agreement, Bhangoo
24 agreed to act as a personal guarantor as to the assigned contract. (Doc. 2 at 4, 6, 7-8) The plaintiff
25 attaches to his complaint copies of each guaranty signed by Bhangoo. Id. 20, 29, 37. As to each, the
26 plaintiff alleges it performed under the contracts but the defendants failed to make the repayments.
27 (Doc. 2 at 4, 6, 7-8) Therefore, the plaintiff has demonstrated the elements for breaches of the
28 guarantees.

1 3. Claim for delivery of personal property

2 To establish a “claim and delivery of personal property” the plaintiff must show that it is entitled
3 to possession of the property, that the property is wrongfully detained by the defendants, demonstrate a
4 description and value of the property, where the property is located and that the property has not been
5 taken for a tax, assessment or fine. (Cal. Civ. Code Proc. § 512.010(b))

6 The complaint shows the plaintiff is entitled to possession of the property due to the failure of
7 the defendants to comply with the terms of the lease agreement and the lease extension. (Doc. 2 at 3-8)
8 This demonstrates also that the defendants have wrongfully retained the property. The complaint also
9 demonstrates the value of the equipment and that the equipment remains in the possession of the
10 defendants. Id. Thus, the plaintiff has adequately stated a cause of action and the claim has merit.

11 In addition, the Court has already issued writs for possession in favor of the plaintiff but the U.S.
12 Marshal has been unable to locate the property and the defendants have ignored demands by the Marshal
13 to return the property. (Doc. 27-1 at 8-9) Consequently, the plaintiff has demonstrated a cause of action
14 under “claim for delivery of personal property.”

15 4. Claim for conversion

16 To establish conversion, a plaintiff must show: (1) plaintiffs’ ownership or right to possession of
17 the property at the time of the conversion; (2) defendants’ conversion by a wrongful act or disposition of
18 plaintiffs’ property rights; and (3) damages. Tyrone Pac. Intern., Inc. v. MV Eurychili, 658 F.2d 664,
19 666 (9th Cir.1981). The plaintiff seeks to dismiss the conversion claim because it will duplicate the
20 recovery sought on the contract claims.

21 **C. Sum of money at stake**

22 In general, the Court “must consider the amount of money at stake in relation to the seriousness
23 of Defendants’ conduct.” Pepsico, Inc., 238 F.Supp.2d at 1176. Thus, the Court must “assess whether
24 the recovery sought is proportional to the harm caused by [a] defendant’s conduct.” Landstar Ranger,
25 Inc. v. Parth Enters., Inc., 725 F. Supp. 2d 916, 921 (N.D. Cal. 2010).

26 Here, the amount of money at issue is \$281,379.10. (Doc. 27-1 at 10) This amount is comprised
27 of the principal, late fees and attorneys’ fees and costs. The Court finds this amount is proportional to
28 the harm caused by the defendants’ conduct and, therefore, this factor does not weigh against entry of

1 default judgment.

2 **D. Possibility of dispute concerning material facts**

3 There is little possibility of dispute concerning material facts because: (1) based on the entry of
4 default, the Court accepts allegations in Plaintiff's Complaint as true and, (2) though properly served
5 (Docs. 10-12), the defendants failed to appear. See Pepsico, Inc., 238 F.Supp.2d at 1177; see also
6 Elektra Entm't Group, Inc. v. Crawford, 226 F.R.D. 388, 393 (C.D. Cal. 2005) ("Because all allegations
7 in a well-pleaded complaint are taken as true after the court clerk enters default judgment, there is no
8 likelihood that any genuine issue of material fact exists"). Therefore, this factor does not weigh against
9 default judgment.

10 **E. Whether default was due to excusable neglect**

11 Generally, the Court will consider whether the defendants' failure to answer is due to excusable
12 neglect. See Eitel, 782 F.2d at 1472. The defendants were served with the summons and complaint in
13 this action and failed to respond. (Docs. 10-12) It is unlikely that the defendants' actions were the
14 result of excusable neglect. See Shanghai Automation Instrument Co., Ltd. v. Kuei, 194 F.Supp.2d
15 995, 1005 (N.D. Cal. 2001) [finding no excusable neglect where the defendants were served and failed
16 to respond]. This factor does not weigh against default judgment.

17 **F. Policy disfavoring default judgment**

18 As noted above, default judgments are disfavored because "[c]ases should be decided on their
19 merits whenever reasonably possible." Eitel, 782 F.2d at 1472. In this case, the policy underlying the
20 Federal Rules of Civil Procedure favoring decisions on the merits does not weigh against default
21 judgment because the defendants' failure to appear and defend in this action makes a decision on the
22 merits impractical.

23 **IV. Damages/Possession of personal property**

24 Plaintiff seeks to recover \$281,379.10. (Doc. 27-1 at 10) This amount is comprised of the
25 principal, late fees and attorneys' fees and costs.

26 **1. Recovery of the principal**

27 Under the finance agreements, the principal sums were \$84,336.48 on the first contract and
28 \$94,733.52 on the other two. (Doc. 2 at 9-10) The parties anticipated payment of these amounts at the

1 time of the formation of the contract and should be recovered.

2 2. Recovery of late fees

3 In Greentree Fin. Grp., Inc. v. Execute Sports, Inc., 163 Cal.App.4th 495, 500 (2008), as
4 modified (May 28, 2008), the Court held, “If the sum extracted from the borrower is designed to exceed
5 substantially the damages suffered by the lender, the provision for the additional sum, whatever its
6 label, is an invalid attempt to impose a penalty inasmuch as its primary purpose is to compel prompt
7 payment through the threat of imposition of charges bearing little or no relationship to the amount of
8 the actual loss incurred by the lender.” The Greentree court quoted Garrett v. Coast & Southern Fed.
9 Sav. & Loan Assn., 9 Cal.3d 731, 739–740 (1973) which held that late charges may not be recovered if
10 the late charge is, in fact, a penalty. Rather, the late charge must bear a “reasonable relationship to the
11 range of actual damages that the parties could have anticipated would flow from a breach.” (Ridgley v.
12 Topa Thrift & Loan Assn., 17 Cal.4th 970, 977 (1998).

13 The complaint fails to detail how the late charges are calculated and the declaration of Jerry
14 Noon fails to explain whether the late charges are related to Ascentium’s costs incurred as a result of
15 the defendant’s conduct. Due to the the poor quality of the copy of the agreements provided, the Court
16 is unable to make out how the late charges are calculated. (Doc. 2 at 13, 22) Thus, the plaintiff has
17 failed to submit proper evidence to support the imposition of the late fees and, therefore, they should be
18 denied.

19 3. Recovery of attorney’s fees and costs

20 The complaint asserts that the finance agreements and the guarantees entitle the plaintiff to an
21 award of attorney’s fees and costs. However, the agreements attached to the complaint and to the
22 declaration of Mr. Noon are poor quality and the Court cannot make out whether they provide for an
23 award of attorney’s fees. Thus, the request for the award of fees and costs should be denied without
24 prejudice to the plaintiff bringing a separate motion after the issuance of a judgment in its favor.

25 4. Recovery of personal property

26 The plaintiff has a lien on each of the utility trailers at issue and seeks to recover them. (Doc.
27 27-1 at 9) The plaintiff seeks to recover, “two 2007 Utility Trailers, S/N 1UYVS253X7U032909 and
28 1UYVS25327U032922,” “two 2007 Utility Trailers, S/Ns 1UYVS25397U032903 and

1 1UYVS25317U032927,” and “two 2007 Utility Trailers, S/Ns 1UYVS25327U033424 and
2 1UYVS25327U033410.” (Doc. 27-1 at 4, 5-6) The plaintiff is entitled to recover this personal
3 property.

4 **VIII. Findings and Recommendations**

5 The Eitel factors weigh in favor of granting default judgment, and the entry of default judgment
6 is within the discretion of the Court. See Aldabe, 616 F.2d at 1092. Based upon the foregoing, **IT IS**

7 **HEREBY RECOMMENDED:**

- 8 1. Plaintiff’s application for default judgment (Doc. 27) be **GRANTED**;
- 9 2. That the Court **GRANT** judgment in the amount of \$265,988.35 in favor of the plaintiff
10 and against the defendants jointly and severally;
- 11 3. That the Court **DENY** the request for the award of late fees based upon a lack of
12 evidence;
- 13 4. That the Court **DENY WITHOUT PREJUDICE** the request for the award of
14 attorney’s fees and costs based upon a lack of evidence;
- 15 5. That the Court **GRANT** plaintiff’s claim and delivery and for possession of the
16 following property:
17 “two 2007 Utility Trailers, S/N 1UYVS253X7U032909 and 1UYVS25327U032922,”
18 “two 2007 Utility Trailers, S/Ns 1UYVS25397U032903 and 1UYVS25317U032927,”
19 and “two 2007 Utility Trailers, S/Ns 1UYVS25327U033424 and
20 1UYVS25327U033410.”
- 21 5. That the Court enter judgment in favor of Ascentium Capital, LLC and against
22 Gurminder Singh, Jaswinder Bhangoo and Blujay Transport Inc, jointly and severally.

23 These Findings and Recommendations are submitted to the United States District Judge
24 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Rule 304 of the Local
25 Rules of Practice for the United States District Court, Eastern District of California. Within 14 days of
26 the date of service of these Findings and Recommendations, any party may file written objections with
27 the court. Such a document should be captioned “Objections to Magistrate Judge’s Findings and
28 Recommendations.”

The parties are advised that failure to file objections within the specified time may waive the

1 right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991); Wilkerson v.
2 Wheeler, 772 F.3d 834, 834 (9th Cir. 2014).

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4 IT IS SO ORDERED.

5 Dated: September 9, 2016

/s/ Jennifer L. Thurston
6 UNITED STATES MAGISTRATE JUDGE

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