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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

SURETEC INSURANCE COMPANY,  
Plaintiff,  
v.  
BRC CONSTRUCTION, INC., et al.,  
Defendants.

No. 2: 11-cv-2813 KJM AC

ORDER

On October 24, 2011, Suretec Insurance Company (“plaintiff” or “Suretec”) filed suit against BRC Construction (“BRC”) and Barry Dean Patrick (“Patrick”) asserting four causes of action stemming from the breach of an indemnity agreement: (1) breach of contract; (2) quia timet; (3) specific performance of indemnity; and (4) declaratory relief. ECF No. 1.

On January 24, 2012, the clerk entered default against BRC on plaintiff’s request. ECF Nos. 7-9.

On March 7, 2012, the court granted plaintiff’s request to serve Patrick by publication and to extend the time to complete service. ECF Nos. 10-11, 14.

On May 8, 2012, plaintiff filed a request for an entry of default as to Patrick and the clerk entered the default the following day. ECF Nos. 16-17.

On July 26, 2012, plaintiff filed an application for the clerk’s entry of default judgment against defendants. ECF No. 20. The clerk declined, as the application included a

1 request for attorneys' fees, and informed counsel to file a new application and a separate motion  
2 for attorneys' fees. ECF Nos. 20, 21.

3 On July 27, 2012, plaintiff filed an application for the clerk to enter a default  
4 judgment in the amount of \$413,255.56; the clerk entered the judgment on July 30, 2012. ECF  
5 Nos. 22-23.

6 Thereafter plaintiff filed a motion for attorneys' fees, which the court denied  
7 without prejudice, stating the request for fees should have been included with a motion for a  
8 default judgment. ECF Nos. 24, 27.

9 Plaintiff filed a motion for default judgment on May 3, 2013. ECF No. 31. On  
10 June 13, 2013, the magistrate judge recommended that the default judgment be modified to award  
11 plaintiff \$413,255.56 in damages and \$92,729.11 in attorney's fees and costs. ECF No. 36.

12 On August 30, 2013, this court declined to adopt the findings and  
13 recommendations but permitted counsel to provide supplemental justification for the request for  
14 fees and costs. ECF No. 37.

15 On September 18, 2013, plaintiff submitted additional information, claiming fees  
16 from 2009 through 2013, supported by over a hundred pages of billing records. ECF No. 38.

17 On November 27, 2013, the court rejected plaintiff's request for fees and denied  
18 the amended motion for default judgment without prejudice. ECF No. 39.

19 On May 8, 2014, the court issued an order to show cause, asking plaintiff to  
20 explain why the court should not dismiss the case for failure to prosecute. ECF No. 40.

21 On May 12, 2014, plaintiff filed a declaration saying it was not going to pursue its  
22 request for attorneys' fees but will proceed on the original default judgment entered by the Clerk  
23 on July 30, 2012. ECF No. 41.

24 The court discharged its order to show cause and directed plaintiff to file any  
25 renewed motion for default judgment no later than July 31, 2014. ECF No. 42. Plaintiff has not  
26 filed a renewed motion.

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As plaintiff has elected not to proceed further with its request for fees, the court hereby reinstates the default judgment in the amount of \$413,255.56 in damages, originally entered on July 30, 2012 against BRC Construction, Inc., and Barry Dean Patrick and directs the Clerk of the Court to enter this default and close the case.

IT IS SO ORDERED.

DATED: December 16, 2014.

  
UNITED STATES DISTRICT JUDGE