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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

COMMERCE AND INDUSTRY  
INSURANCE COMPANY,  
  
Plaintiff,  
  
v.  
  
MICHAEL JOSEPH CARTER dba TITAN  
FRAMING,  
  
Defendant.

No. 2:15-cv-2059-TLN-KJN

ORDER

INTRODUCTION

Presently pending before the court is plaintiff Commerce and Industry Insurance Company’s motion for entry of default judgment against defendant Michael Joseph Carter, doing business as Titan Framing. (ECF No. 27.)<sup>1</sup> On June 28, 2017, after defendant failed to oppose plaintiff’s motion in accordance with Local Rule 230, the court vacated the hearing on the motion and gave defendant one final opportunity to oppose the motion by July 13, 2017. (ECF No. 28.) Nevertheless, no opposition was ultimately filed.

After carefully considering the written briefing, the court’s record, and the applicable law, the court GRANTS plaintiff’s motion.

<sup>1</sup> Plaintiff, the sole party appearing in this action, consented to the jurisdiction of a United States Magistrate Judge pursuant to 28 U.S.C. § 636(c). (ECF No. 30.)

1 BACKGROUND

2 In 2013, plaintiff, a New York corporation, issued a worker’s compensation insurance  
3 policy to defendant, a California resident and sole proprietor, covering a period from October 17,  
4 2013, to October 17, 2014 (hereafter referred to as “Policy 1”). (Second Amended Complaint,  
5 ECF No. 15 [“SAC”] ¶¶ 1, 2, 7, Ex. A; Declaration of Tammy Tedesco, ECF No. 27-3 [“Tedesco  
6 Decl.”] ¶ 5, Ex. A.) The policy was subsequently extended to cover a period from October 17,  
7 2014, to October 17, 2015 (hereafter referred to as “Policy 2”). (SAC ¶ 8, Ex. B; Tedesco Decl. ¶  
8 6, Ex. B.) Both policies were contracts, which required defendant to pay all premiums due in  
9 exchange for coverage under the policies. (SAC ¶¶ 10, 11, 17, 18, Exs. A, B; Tedesco Decl. ¶¶ 8,  
10 9, Exs. A, B.) Pursuant to the policies, defendant initially paid an estimated premium at the  
11 beginning of the policy periods, which plaintiff calculated based on information provided by  
12 defendant. (SAC ¶ 10; Tedesco Decl. ¶ 10.) However, consistent with the policies, the final  
13 premium was only determined at the end of each policy period based on an audit of defendant’s  
14 operations, payroll, and other records and documents. (SAC ¶ 13, Exs. A, B; Tedesco Decl. ¶¶  
15 10-12, Exs. A, B.) Plaintiff alleges that audits at the end of the policy periods revealed that  
16 defendant owed additional premium balances under each policy, but that defendant breached the  
17 policies by failing to pay the additional amounts due. (SAC ¶¶ 13-15; Tedesco Decl. ¶¶ 13-20.)

18 Based on the above, plaintiff commenced this diversity action against defendant on  
19 September 30, 2015. (ECF No. 1.) The operative second amended complaint alleges claims for:  
20 (1) breach of contract; (2) unjust enrichment; (3) open book; and (4) reasonable value. (ECF No.  
21 15.) Plaintiff seeks compensatory damages or restitution, attorneys’ fees, costs, and interest at the  
22 legal rate. (Id.) After defendant was properly served with process and failed to appear in the  
23 action, the Clerk of Court entered defendant’s default upon plaintiff’s request. (ECF Nos. 17-19.)  
24 The instant motion for default judgment followed. (ECF No. 27.)

25 LEGAL STANDARD

26 Pursuant to Federal Rule of Civil Procedure 55, default may be entered against a party  
27 against whom a judgment for affirmative relief is sought who fails to plead or otherwise defend  
28 against the action. See Fed. R. Civ. P. 55(a). However, “[a] defendant’s default does not

1 automatically entitle the plaintiff to a court-ordered judgment.” PepsiCo, Inc. v. Cal. Sec. Cans,  
2 238 F. Supp. 2d 1172, 1174 (C.D. Cal. 2002) (citing Draper v. Coombs, 792 F.2d 915, 924-25  
3 (9th Cir. 1986)). Instead, the decision to grant or deny an application for default judgment lies  
4 within the district court’s sound discretion. Aldabe v. Aldabe, 616 F.2d 1089, 1092 (9th Cir.  
5 1980). In making this determination, the court considers the following factors:

6  
7 (1) the possibility of prejudice to the plaintiff, (2) the merits of  
8 plaintiff’s substantive claim, (3) the sufficiency of the complaint,  
9 (4) the sum of money 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.

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

11 As a general rule, once default is entered, well-pled factual allegations in the operative  
12 complaint are taken as true, except for those allegations relating to damages. TeleVideo Sys., Inc.  
13 v. Heidenthal, 826 F.2d 915, 917-18 (9th Cir. 1987) (per curiam) (citing Geddes v. United Fin.  
14 Group, 559 F.2d 557, 560 (9th Cir. 1977) (per curiam)); accord Fair Housing of Marin v. Combs,  
15 285 F.3d 899, 906 (9th Cir. 2002). In addition, although well-pled allegations in the complaint  
16 are admitted by a defendant’s failure to respond, “necessary facts not contained in the pleadings,  
17 and claims which are legally insufficient, are not established by default.” Cripps v. Life Ins. Co.  
18 of N. Am., 980 F.2d 1261, 1267 (9th Cir. 1992) (citing Danning v. Lavine, 572 F.2d 1386, 1388  
19 (9th Cir. 1978)); accord DIRECTV, Inc. v. Hoa Huynh, 503 F.3d 847, 854 (9th Cir. 2007) (stating  
20 that a defendant does not admit facts that are not well-pled or conclusions of law); Abney v.  
21 Alameida, 334 F. Supp. 2d 1221, 1235 (S.D. Cal. 2004) (“[A] default judgment may not be  
22 entered on a legally insufficient claim”). A party’s default does not establish the amount of  
23 damages. Geddes, 559 F.2d at 560.

## 24 DISCUSSION

### 25 Appropriateness of the Entry of Default Judgment under the Eitel Factors

#### 26 1. *Factor One: Possibility of Prejudice to Plaintiff*

27 The first Eitel factor considers whether the plaintiff would suffer prejudice if default  
28 judgment is not entered, and such potential prejudice to the plaintiff militates in favor of granting

1 a default judgment. See PepsiCo, Inc., 238 F. Supp. 2d at 1177. Here, plaintiff would face  
2 prejudice if the court did not enter a default judgment, because plaintiff would be without another  
3 recourse against defendant. As such, the first Eitel factor favors the entry of a default judgment.

4           2.       *Factors Two and Three: The Merits of Plaintiff's Substantive Claim and*  
5 *the Sufficiency of the Complaint*

6           The court considers the merits of plaintiff's substantive claim and the sufficiency of the  
7 complaint together below because of the relatedness of the two inquiries. The court must  
8 consider whether the allegations in the complaint are sufficient to state a claim on which plaintiff  
9 may recover. See Danning, 572 F.2d at 1388; PepsiCo, Inc., 238 F. Supp. 2d at 1175.

10           Here, plaintiff has adequately alleged that defendant breached the terms of the insurance  
11 policies, which constitute legally binding contracts, by failing to pay plaintiff the additional  
12 premium amounts due after appropriate audits were conducted. As such, plaintiff's breach of  
13 contract claim is sufficiently pled and has merit.

14           Plaintiff's motion for default judgment does not address plaintiff's remaining claims,  
15 which essentially represent alternative theories of recovery for the same type of harm. Therefore,  
16 the court declines to analyze plaintiff's remaining claims for purposes of this motion.

17           In light of the above, the second and third Eitel factors favor the entry of default  
18 judgment.

19           3.       *Factor Four: The Sum of Money at Stake in the Action*

20           Under the fourth factor cited in Eitel, "the court must consider the amount of money at  
21 stake in relation to the seriousness of Defendant's conduct." PepsiCo, Inc., 238 F. Supp. 2d at  
22 1176-77; see also Philip Morris USA, Inc. v. Castworld Prods., Inc., 219 F.R.D. 494, 500 (C.D.  
23 Cal. 2003). In this case, plaintiff seeks over \$3,000,000.00, which is plainly a very large sum of  
24 money that requires careful scrutiny. That said, if such amount is properly supported and due  
25 under the policies, and defendant failed to meet his obligation to pay it, the large sum of money,  
26 by itself, does not preclude the entry of default judgment.

27           4.       *Factor Five: The Possibility of a Dispute Concerning Material Facts*

28           The court may assume the truth of well-pled facts in the complaint (except as to damages)

1 following the clerk’s entry of default, and defendant has not appeared to dispute any such facts.  
2 Thus, there is no likelihood that any genuine issue of material fact exists. See, e.g., Elektra  
3 Entm’t Group Inc. v. Crawford, 226 F.R.D. 388, 393 (C.D. Cal. 2005) (“Because all allegations in  
4 a well-pleaded complaint are taken as true after the court clerk enters default judgment, there is  
5 no likelihood that any genuine issue of material fact exists”); accord Philip Morris USA, Inc., 219  
6 F.R.D. at 500; PepsiCo, Inc., 238 F. Supp. 2d at 1177. Accordingly, the fifth Eitel factor favors  
7 the entry of default judgment.

8           5.       *Factor Six: Whether the Default Was Due to Excusable Neglect*

9           In this case, there is no indication in the record that defendant’s default was due to  
10 excusable neglect. Accordingly, the sixth Eitel factor favors the entry of a default judgment.

11           6.       *Factor Seven: The Strong Policy Underlying the Federal Rules of Civil Procedure*  
12 *Favoring Decisions on the Merits*

13           “Cases should be decided upon their merits whenever reasonably possible.” Eitel, 782  
14 F.2d at 1472. However, district courts have concluded with regularity that this policy, standing  
15 alone, is not dispositive, especially where a defendant fails to appear or defend itself in an action.  
16 PepsiCo, Inc., 238 F. Supp. 2d at 1177; see also Craigslist, Inc. v. Naturemarket, Inc., 694 F.  
17 Supp. 2d 1039, 1061 (N.D. Cal. 2010). Accordingly, although the court is cognizant of the policy  
18 in favor of decisions on the merits—and consistent with existing policy would prefer that this  
19 case be resolved on the merits—that policy does not, by itself, preclude entry of default judgment.

20           In sum, although the large sum of money involved warrants caution, the balance of factors  
21 show that plaintiff is entitled to a default judgment.

22           Terms of the Judgment to Be Entered

23           After determining that a party is entitled to the entry of default judgment, the court must  
24 determine the terms of the judgment to be entered. Plaintiff’s motion for default judgment seeks  
25 an award of compensatory damages and prejudgment interest, which were also requested in the  
26 complaint.<sup>2</sup> Each form of relief is addressed separately below.

27 \_\_\_\_\_  
28 <sup>2</sup> Although plaintiff’s complaint also sought an award of attorneys’ fees and costs, such relief is  
not requested in plaintiff’s motion for default judgment. As such, the court does not evaluate



1 due on June 8, 2016. (Tedesco Decl. ¶¶ 15, 19, Exs. C, F.) The policies do not appear to specify  
2 a prejudgment interest rate, and thus the statutory 10 percent interest rate applies. Based on the  
3 above dates and interest rate, plaintiff requests an award of prejudgment interest through the filing  
4 date of its motion for default judgment (June 2, 2017) in the amounts of \$250,229.80 for Policy 1,  
5 and \$143,604.81 for Policy 2, for a total of \$393,834.61 in prejudgment interest. Because  
6 plaintiff's request appears to be supported by the record and by the proper analysis, and defendant  
7 has not appeared to oppose the request, plaintiff is awarded a total of \$393,834.61 in prejudgment  
8 interest.

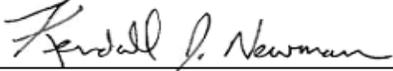
9 CONCLUSION

10 For the foregoing reasons, IT IS HEREBY ORDERED that:

- 11 1. Plaintiff's motion for default judgment (ECF No. 27) is GRANTED.
- 12 2. Judgment is entered in plaintiff's favor and against defendant.
- 13 3. Plaintiff is awarded \$2,668,169.00 in compensatory damages, and \$393,834.61 in  
14 prejudgment interest, for a total amount of \$3,062,003.61.
- 15 4. The Clerk of Court shall close this case.

16 IT IS SO ORDERED.

17 Dated: October 2, 2017

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20 KENDALL J. NEWMAN  
21 UNITED STATES MAGISTRATE JUDGE  
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