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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARY SHAFFER, et al.,
Plaintiffs,
v.
VANDERBILT COMMERCIAL
LENDING, INC., et al.,
Defendants.
VANDERBILT COMMERCIAL
LENDING, INC., et al.,
Counterclaim-Plaintiffs,
v.
WAKE FOREST ACQUISITIONS, L.P.,
Countercl.-Defendants.

No. 2:15-cv-2167 KJM DB

ORDER

On November 16, 2017, plaintiffs filed a motion for default judgment and noticed the motion for hearing before the undersigned on December 22, 2017. (ECF No. 66.) Plaintiffs’ motion seeks entry of default judgment against defendant Vanderbilt Commercial Lending, Inc. (Id. at 2.) Plaintiffs’ motion, however, does not seek default judgment against defendant Gregory

1 Cook.

2 Rule 54(b) of the Federal Rules of Civil Procedure provides in pertinent part:

3 ... when multiple parties are involved, the court may direct entry of
4 a final judgment as to one or more, but fewer than all, claims or
5 parties only if the court expressly determines that there is no just
reason for delay.

6 See also Curtiss-Wright Corp. v. General Elec. Co., 446 U.S. 1, 8 (1980) (noting that the court
7 has discretion to enter a default judgment as to less than all defendants); Shanghai Automation
8 Instrument Co., Ltd. v. Kuei, 194 F. Supp.2d 995, 1010 (N.D. Cal. 2001) (“differing judgments
9 against defendant Tsai and the defaulting defendants would not necessarily be illogical”).

10 However, the Supreme Court warned that “absurdity might follow” in instances where a
11 court “can lawfully make a final decree against one defendant . . . while the cause was proceeding
12 undetermined against the others.” Frow v. De La Vega, 82 U.S. 552, 554 (1872). The Ninth
13 Circuit has summarized the Frow standard as follows: “[W]here a complaint alleges that
14 defendants are jointly liable and one of them defaults, judgment should not be entered against the
15 defaulting defendant until the matter has been adjudicated with regard to all defendants.” In re
16 First T.D. & Investment, 253 F.3d 520, 532 (9th Cir. 2001) (citing Frow, 82 U.S. at 554); see also
17 Employee Painters’ Trust v. Cascade Coatings, No. C12-0101 JLR, 2014 WL 526776, at *3
18 (W.D. Wash. Feb. 10, 2014) (“it would be an abuse of discretion for this court to grant Plaintiffs’
19 motion for default judgment because Plaintiffs allege the same claims against Mr. Schlatter and
20 the non-defaulted jointly and severally liable co-defendants, Mr. McLaughlin and Cascade
21 Partnership. Supreme Court and Ninth Circuit precedent prohibit default judgment where a
22 default judgment against one defendant could be inconsistent with a judgment on the merits in
23 favor of other defendants”); Helton v. Factor 5, Inc., Case No: C 10-4927 SBA, 2013 WL
24 5111861, at *6 (N.D. Cal. Sept. 12, 2013) (“In the present case, there is a serious risk of
25 inconsistent judgments. Plaintiffs have alleged that Defendants all are jointly and severally liable
26 for the 11 claims alleged in the First Amended Class Action Complaint.”).

27 Moreover, on August 16, 2017, plaintiffs filed a motion for leave to file an amended
28 complaint. (ECF No. 57.) That motion is under submission before the assigned District Judge.

1 (ECF No. 61.) If plaintiffs' motion for leave to amend is granted, the amended complaint would
2 supersede the original complaint filed in this action. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir.
3 1967).

4 Accordingly, IT IS HEREBY ORDERED that:

5 1. The December 22, 2017 hearing of plaintiffs' motion for default judgment (ECF No.
6 66) is continued to **Friday, February 2, 2018, at 10:00 a.m.**, at the United States District Court,
7 501 I Street, Sacramento, California, in Courtroom No. 27, before the undersigned; and

8 2. On or before January 19, 2018, plaintiffs shall file a supplemental memorandum
9 addressing the status of defendant Gregory Cook and plaintiffs' motion for leave to amend.

10 DATED: December 21, 2017

/s/ DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

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