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2 UNITED STATES DISTRICT COURT  
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
4 OAKLAND DIVISION

5 ALLIANT CREDIT UNION,

6 Plaintiff,

7 vs.

8 THE VESSEL, "EAGLE'S REST," her  
9 rigging, engines, tackle, etc., and all other  
10 necessities thereunto appertaining and  
11 belonging to in Rem; and STEVEN E.  
12 THOMAS, in Personam,

13 Defendants.

Case No: C 09-1616 SBA

**ORDER DENYING PLAINTIFF'S  
APPLICATION FOR DEFAULT  
JUDGMENT**

Docket 20

14 Plaintiff Alliant Credit Union ("Alliant") filed a Complaint for Foreclosure of  
15 Preferred Ship Mortgage against the vessel, "Eagle's Rest" ("the Vessel"), in rem, and the  
16 Vessel's owner, Steven Thomas ("Thomas"), in personam, on April 13, 2009. At Alliant's  
17 request, the Clerk of the Court entered default against Thomas on September 15, 2009.  
18 This matter comes before the Court on Plaintiff's Application for Entry of Default  
19 Judgment against Defendant Thomas, pursuant to Federal Rule of Civil Procedure 55.  
20 (Docket 20.) Having read and considered the papers filed in connection with his matter,  
21 including the supplemental briefing submitted by Alliant, the Court hereby DENIES  
22 Alliant's request for default judgment. Pursuant to Rule 78(b), the Court resolves this  
23 matter without argument.

24 **I. BACKGROUND**

25 On July 25, 2006, Thomas borrowed \$68,000 from Alliant, pledging his Vessel as  
26 security. (Compl. ¶¶ 5-6, Docket 1.) In accordance with 46 U.S.C. §§ 31321, et seq., the  
27 loan agreement was memorialized in a Preferred Ship Mortgage of Vessel. (Id. ¶ 6.)  
28 Thomas ceased payment on the debt on or about September 1, 2008. (Id. ¶ 9.) As a result,

1 Alliant filed the instant action to seize and sell the Vessel, and to recover from Thomas “the  
2 amount of any deficiency that may be due the Alliant after applying the proceeds of sale of  
3 the mortgaged vessel to the amount of the decree herein.” (Id. ¶¶ 4, 6.) Neither Defendant  
4 answered the Complaint. Thus, on September 15, 2009, the Clerk entered default against  
5 Thomas only. (Docket 16.)

6 On January 21, 2010, Alliant filed an application for default judgment against  
7 Thomas to recover the entire amount of the mortgage lien, i.e., unpaid principle in the  
8 amount of \$63,020.46, plus interest at a rate of 7% per annum from September 29, 2008,  
9 and attorneys’ fees in the amount of \$4,148.85, for a total judgment of \$72,931.47. (Appl.  
10 for Default J. ¶ 4; Decl. of Cathryn Wolfkill ¶¶ 9-10, Docket 20.) Although the Complaint  
11 specifically requested that the Vessel be “condemned and sold to pay the demands and  
12 claims,” Alliant now alleges in its application that proceeding against the Vessel, which is  
13 now docked in Panama and beyond this Court’s jurisdiction, has become “too costly.”  
14 (Appl. for Default J. ¶ 4.) As such, Alliant seeks to forego seizure of the Vessel, and  
15 instead, requests a default judgment directly against Thomas for the full amount of the  
16 outstanding indebtedness—as opposed to merely seeking to hold him liable for any  
17 deficiency.

18 The Court reviewed Alliant’s request for default judgment and found it deficient.  
19 (Order for Supp. Br. at 2, Docket 24.) The Court noted that Alliant had failed to provide  
20 any analysis or legal support to establish that this Court has jurisdiction or the legal  
21 authority to hold Thomas liable for the entire amount of the debt, in lieu of foreclosing on  
22 the Vessel—particularly given that there are no direct claims in the Complaint against  
23 Thomas for failure to repay the entire debt. (Id.) In addition, the Court found that Alliant’s  
24 assertions that it would be “too costly” to recover the Vessel, and concerning the amount  
25 owed on the debt, were inadequately supported. (Id.) Thus, the Court ordered  
26 supplemental briefing on these issues. On February 22, 2010, Alliant submitted a  
27 Supplemental Memorandum of Points and Authorities in Support of Default Judgment and  
28 a supplemental supporting declaration. (Docket 26, 27.)

1 **II. LEGAL STANDARD**

2 After the entry of default, a plaintiff may apply for a default judgment. Fed.R.Civ.  
3 P. 55(b). The decision to grant or deny a request for default judgment lies within the sound  
4 discretion of the court. Aldabe v. Aldabe, 616 F.2d 1089, 1092 (9th Cir. 1980). In  
5 exercising its discretion, the court is guided by consideration of several factors: (1) the  
6 possibility of prejudice to the plaintiff; (2) the merits of plaintiff’s substantive claim; (3) the  
7 sufficiency of the complaint; (4) the sum of money at stake in the action; (5) the possibility  
8 of a dispute concerning material facts; (6) whether the default was due to excusable neglect;  
9 and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring  
10 decisions on the merits. Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986).

11 **III. DISCUSSION**

12 **A. ENFORCEMENT OF PREFERRED MORTGAGE LIENS**

13 A preferred mortgage is a lien on the mortgaged vessel in the amount of the  
14 outstanding mortgage indebtedness secured by the vessel. 46 U.S.C. § 31325(a). In the  
15 event of a default on any term of a preferred mortgage, the mortgagee may enforce the  
16 preferred mortgage lien, inter alia, through “a civil action in rem for the documented  
17 vessel,” and “a civil action in personam in admiralty” against the mortgagor for the  
18 outstanding indebtedness or any deficiency in full payment of that indebtedness. 46 U.S.C.  
19 § 31325(b). Federal district courts have original and exclusive jurisdiction for civil actions  
20 brought in rem, and original and concurrent jurisdiction with the courts of a State for in  
21 personam civil actions brought against the mortgagor. 46 U.S.C. § 31325(c).

22 An in rem action is brought against the vessel itself as defendant. 2 Admiralty &  
23 Mar. Law § 21-3 (4th ed.); Canadian Aviator v. United States, 324 U.S. 215, 224 (1945).  
24 “Fundamental to United States admiralty practice in rem under Rule C [of the  
25 Supplemental Rules for Certain Admiralty and Maritime Claims] is the idea of  
26 personification of the vessel”; that is, the notion that the vessel as defendant is held liable  
27 separate and apart from the owner or mortgagor. 2 Admiralty & Mar. Law § 21-3. Except  
28 as otherwise provided by law, a party who may proceed in rem may also, or in the

1 alternative, proceed in personam against any person who may be liable. Fed.R.Civ.P. App.  
2 C Rule C; 1 Admiralty & Mar. Law § 9-5. The advantage of combining in rem and in  
3 personam actions is that a deficiency judgment may be entered against in personam  
4 defendants for the excess of the amount of damages over the fair market value of the vessel.  
5 Id.; see Bollinger & Boyd Barge Serv., Inc. v. Motor Vessel, Captain Claude Bass, 576  
6 F.2d 595, 597 (5th Cir. 1978).

7 **B. MERITS AND SUFFICIENCY OF THE COMPLAINT**

8 The salient issue presented is whether Alliant may properly obtain a default  
9 judgment on its in personam claim against Thomas for the full amount of the mortgage lien.  
10 The starting point for determining whether the requested default judgment is proper is the  
11 Complaint, because “[a] default judgment must not differ in kind from, or exceed in  
12 amount, what is demanded in the pleadings.” Fed.R.Civ.P.54(c); see, e.g., In re Ferrell, 539  
13 F.3d 1186, 1192-93 (9th Cir. 2008) (holding default judgment award of attorney’s fees and  
14 costs based on a statute that was not pled in the complaint violated Rule 54(c)). The  
15 purpose of Rule 54(c) is to put the defendant on notice of the relief being sought against it.  
16 In re Ferrell, 539 F.3d at 1192-93. By limiting recoverable damages to what is specified in  
17 the pleadings, Rule 54(c) “ensures that a defendant considering default can look at the  
18 damages clause [and] satisfy himself that he is willing to suffer judgment in that amount.”  
19 Silge v. Merz, 510 F.3d 157, 159 (2d Cir. 2007) (holding that demand for all interest  
20 accrued prevented plaintiff from recovering pre-judgment interest).

21 In the instant case, Alliant’s first and only claim for relief seeks to have the Vessel  
22 “sold to pay the demands and claims,” based on the amount due under the mortgage lien.  
23 (Compl. ¶ 4.) As to Thomas, Alliant *only* seeks to “recover . . . the amount of any  
24 *deficiency* that may be due the Alliant after applying the proceeds of the sale of the  
25 mortgaged vessel to the amount of the decree herein.” (Id. ¶ 6 (emphasis added).)  
26 Undoubtedly, the Complaint is sufficient to have placed Thomas on notice that a judgment  
27 could be entered against him personally in the event the proceeds from the sale of Vessel  
28 failed to satisfy the outstanding balance due on the lien. However, nothing in the

1 Complaint provides notice to Thomas that Alliant may forego the sale of the Vessel, and  
2 instead, seek to hold him personally liable for the amount owed on the mortgage.  
3 Tellingly, Alliant never confronts this critical fact in its supplemental memorandum.  
4 Because it is uncontroverted that the relief sought by Alliant exceeds that of the  
5 Complaint, the requested default judgment must fail. E.g., Family Tree Farms, LLC v.  
6 Alfa Quality Produce, Inc., 2009 WL 565568, \*4 (E.D.Cal. Mar. 4, 2009) (“Plaintiff did  
7 not in the complaint allege entitlement to punitive damages or pray for punitive damages.  
8 Therefore, it would be inappropriate for Alliant to recover punitive damages in the instant  
9 application because such damages are beyond the scope of the complaint, and thus no  
10 meaningful notice has been given of a demand for punitive damages”).<sup>1</sup>

11 Alliant appears to suggest that the Court should overlook the difference between the  
12 claim for relief alleged in the Complaint versus its application for default judgment on the  
13 ground that it would be too costly to recover the Vessel, which is now outside the Court’s  
14 jurisdiction in Panama. (Id. at 2-3.) However, Alliant fails to cite any authority for the  
15 proposition that the Court can ignore the limitations on default judgments imposed by Rule  
16 54(c) as a result of inaction on the part of the plaintiff. To the extent that Plaintiff desired  
17 to preserve its claim against the Vessel, it should have sought to have a warrant issued for  
18 its arrest. See Cactus Pipe & Supply Co. v. M/V Montmartre, 756 F.2d 1103, 1107 (5th  
19 Cir. 1985). Having failed to do to so, Plaintiff cannot legitimately claim that equitable  
20 considerations justify entering a default judgment against Thomas for relief that was never  
21 sought in the Complaint in the first instance.

22 Finally, Alliant asserts that “[it] still seeks a judgment for the sale of the vessel, if  
23 recovered in the future, but seeks a judgment for the outstanding indebtedness against  
24 Defendant, Steven Thomas at this time.” (Supp. Mem. at 3.) Alliant then pledges to

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26 <sup>1</sup> Though the prayer asks “for such other and further relief as the Court considers just  
27 and proper,” (Compl. at 5), such general language does not satisfy the meaningful notice  
28 required by Rule 54(c). Ferrell, 539 F.3d at 1193; Silge, 510 F.3d at 159 (quoting  
Nagrampa v. MailCoups, Inc., 469 F.3d 1257, 1277 n.6 (9th Cir. 2006) (“such general  
requests for relief are deemed mere boilerplate, meant to cover all bases as to the claims  
asserted in the complaint”)).

1 provide a “credit” to Thomas in the event they are able to recover and sell the Vessel in the  
2 future. (Id.) Again, Alliant fails to cite any legal authority in support of this proposal,  
3 which, in any event, does not appear to be cognizable under admiralty law. See J. Ray  
4 McDermott v. Vessel Morning Star, 457 F.2d 815, 818 (5th Cir. 1972) (“The Ship  
5 Mortgage Act when read together with the statutes delineating the judicial sale procedure in  
6 federal courts, forms a comprehensive procedure for the foreclosure of a preferred ship  
7 mortgage, the sale of a vessel and any resulting deficiency adjudged against the debtor in  
8 personam.”). That notwithstanding, Alliant’s assertion ignores that if Alliant were to  
9 recover the full amount of the outstanding indebtedness from Thomas, Alliant would no  
10 longer have a claim to the Vessel. See USL Capital v. New York 30, 975 F. Supp. 382,  
11 386 (D. Mass. 1996) (separate in rem action may be available only to collect unpaid portion  
12 of a judgment against a joint tortfeasor).

### 13 C. REMAINING FACTORS

14 Though discussed nowhere by Alliant in its initial application or supplemental  
15 memorandum, the Court notes that other relevant Eitel factors militate against entering a  
16 default judgment against Thomas. Notably, Alliant has made no claim or showing that it  
17 will suffer prejudice if a default judgment is not entered. To the contrary, the denial of  
18 Alliant’s application for default judgment in no way precludes it from suing Thomas for the  
19 entire amount of the mortgage lien. In addition, the strong policy in favor of deciding cases  
20 on their merits also weighs against the proposed default judgment.<sup>2</sup> Taking in account  
21 these factors, coupled with fact that the default judgment being sought by Alliant is barred  
22 by Rule 54(c), the Court, in its discretion, concludes that the entry of a default judgment  
23 against Thomas is not appropriate in this case.

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27 <sup>2</sup> With regard to the remaining factors, the Court has not been provided with sufficient  
28 information to assess whether they weigh in favor or against a default judgment. Nonetheless,  
even if they favored a default judgment, these factors are outweighed by those that favor  
denial.

1 **IV. CONCLUSION**

2 The Court, in its discretion, concludes that a default judgment against Thomas based  
3 on the Complaint, as it currently is pled, is inappropriate. Because Alliant may be able to  
4 resolve the deficiencies set forth in this Order by amending its Complaint, the Court grants  
5 Alliant leave to do so. To the extent that Alliant does not desire to amend its Complaint, it  
6 should file a notice of dismissal under Rule 41(a). Accordingly,

7 **IT IS HEREBY ORDERED THAT:**

8 1. Alliant's Application for Entry of Default Judgment against Defendant  
9 Steven Thomas is DENIED.

10 2. Alliant is granted leave to amend its Complaint. Within ten days of the date  
11 this Order is filed, Alliant shall either file an amended complaint or request for voluntary  
12 dismissal under Rule 41(a)(1)(A). Failure to timely comply with this Order may result in  
13 the dismissal of the action, with prejudice, pursuant to Rule 41(b).

14 3. The parties shall appear for a telephonic Case Management Conference on  
15 **September 23, 2010 at 2:30 p.m.** The parties shall meet and confer prior to the conference  
16 and shall prepare a joint Case Management Conference Statement which shall be filed no  
17 later than ten (10) days prior to the Case Management Conference that complies with the  
18 Standing Order for All Judges of the Northern District of California and the Standing Order  
19 of this Court. Plaintiff shall be responsible for filing the statement as well as for arranging  
20 the conference call. All parties shall be on the line and shall call (510) 637-3559 at the  
21 above indicated date and time.

22 4. This Order terminates Docket 20.

23 **IT IS SO ORDERED.**

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25 Dated: September 2, 2010

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SAUNDRA BROWN ARMSTRONG  
United States District Judge