

1                                    IN THE UNITED STATES DISTRICT COURT  
2                                    FOR THE NORTHERN DISTRICT OF CALIFORNIA

3  
4 ALLSTATE INSURANCE COMPANY, an  
5 Illinois Corporation,

6                                    Plaintiff,

7                                    v.

8 ANDREW PIRA, RICHARD PIRA, and  
9 ALEXANDER YIN,

10                                   Defendants.  
11

12                                   \_\_\_\_\_/  
13 AND ALL RELATED COUNTERCLAIMS  
14 AND CROSS-CLAIMS  
15 \_\_\_\_\_/

16                                   On April 19, 2013, the Court granted Plaintiff and Counter-  
17 Defendant Allstate Insurance Company's motion for summary judgment  
18 in its favor on the second cause of action of its complaint and on  
19 all claims made against it by Defendant and Counter-Plaintiff  
20 Alexander Yin. Docket No. 101. The Court held that Allstate was  
21 not responsible for satisfying any portion of the judgment that  
22 Yin won against Defendants Richard and Andrew Pira in a state  
23 court action. At that time, the Court directed Allstate to either  
24 move for default judgment against the Piras, whose defaults had  
25 previously been entered, or dismiss its claims against them and  
26 move for entry of judgment.

27                                   Allstate now moves to dismiss without prejudice its first and  
28 third claims, which were asserted against the Piras only, and to  
enter judgment against the Piras and Yin on Allstate's second  
cause of action and against Yin on all of his claims against  
Allstate. Allstate's motion was served on Yin through the Court's

1 electronic notification system and on the Piras by mailing.  
2 Docket Nos. 104, 106. As of the date of this Order, no opposition  
3 or response to the motion has been filed.

4 Allstate's motion to dismiss its first and third causes of  
5 action against the Piras is GRANTED. These claims are dismissed  
6 without prejudice.

7 Allstate also seeks default judgment against the Piras on its  
8 second cause of action. "When entry of judgment is sought against  
9 a party who has failed to plead or otherwise defend, a district  
10 court has an affirmative duty to look into its jurisdiction over  
11 both the subject matter and the parties." In re Tuli, 172 F.3d  
12 707, 712 (9th Cir. 1999). The Court has diversity jurisdiction  
13 over the case pursuant to 28 U.S.C. § 1332 because Allstate is a  
14 citizen of Illinois, Defendants are citizens of California and the  
15 amount in controversy exceeds \$75,000. The Court also has  
16 personal jurisdiction over the Piras, who reside in this district.  
17 The Court has also reviewed the proofs of service and finds that  
18 Allstate properly served the Piras with the summons and complaint  
19 through substituted service pursuant to California Code of Civil  
20 Procedure section 415.20. See Docket Nos. 7, 12; see also Fed. R.  
21 Civ. Proc. 4(e) (providing that service may be made following  
22 state law).

23 Having found these conditions satisfied, the Court considers  
24 the following factors to determine whether it should grant a  
25 default judgment:

- 26 (1) the possibility of prejudice to the plaintiff,  
27 (2) the merits of plaintiff's substantive claim, (3) the  
28 sufficiency of the complaint, (4) the sum of money at  
stake in the action[,], (5) the possibility of a dispute  
concerning material facts[,], (6) whether the default was

1 due to excusable neglect, and (7) the strong policy  
2 underlying the Federal Rules of Civil Procedure favoring  
3 decision on the merits.

4 Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986) (citation  
5 omitted).

6 The Eitel factors support default judgment here. First, if  
7 the motion were denied, Allstate would be left unable to obtain a  
8 determination regarding its obligations to indemnify the Piras on  
9 the underlying judgment. Further, Allstate's complaint properly  
10 pleads the claim and the Court has already found the claim to be  
11 meritorious. In doing so, the Court considered the Piras' sworn  
12 testimony from their depositions and found that it did not create  
13 a material dispute about the duty of indemnification. Because the  
14 Piras have not answered or otherwise appeared, the possibility  
15 that they would be able to raise any other meritorious defense is  
16 unknown. As to the fourth factor, Allstate seeks declaratory  
17 judgment and not money damages. Further, although the declaratory  
18 relief sought determines Allstate's obligations to indemnify the  
19 Piras for the \$1.25 million judgment against them in the  
20 underlying case, even considering this amount as being at stake,  
21 it is reasonable because it is tailored to the specific facts of  
22 the controversy here and supported by the evidence in the record.  
23 Finally, there is no evidence that the Piras' failure to appear  
24 was the result of excusable neglect. Examining these first six  
25 factors, the Court finds that they outweigh the strong policy for  
26 a decision on the merits and that default judgment should be  
27 entered against the Piras on Allstate's second cause of action.  
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