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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

HARTFORD LIFE INSURANCE
COMPANY,

vs.
MARY BANKS, et al.

Plaintiff,

Defendants.

CASE NO. 08cv1279 WQH (WVG)
ORDER

HAYES, Judge:

The matter before the Court is the Joint Response to this Court’s Order regarding the distribution of the share of the annuity proceeds which the settlement agreement awarded to defaulted Defendant NAM filed by Defendants Mary Banks, Beyrl Rayford, and Sanberg Phoenix & Von Gontard P.C. (ECF No. 124).

On July 16, 2008, Plaintiff Hartford Life Insurance Company (“Hartford”) initiated this action by filing the Complaint in Interpleader (“Complaint”) against Sandberg, Phoenix & Von Gontard, P.C. (“Sandberg”), Mary Banks (“Banks”), Beryl Rayford (“Rayford”), Umar Almajid (“Almajid”), North American Mercantile (“NAM”).¹ (ECF No. 1). This case concerns a dispute over the inheritance of annuities owned by Cleona Bailey Shortridge. The Complaint alleges that Almajid and Rayford, Shortridge’s nephew and niece, were named as

¹ The Complaint also names Richard Wier and Monnye Gross as defendants; however, on November 13, 2008, they were dismissed with prejudice. (ECF No. 20).

1 the beneficiaries of the annuities in a revocable trust executed on August 4, 1997, with Banks
2 as the successor trustee. *Id.* at 5. The Complaint alleges that on June 2, 2002, Shortridge
3 changed the beneficiary of the annuities to NAM. *Id.* at 4.

4 The Complaint alleges that after Shortridge's death, Banks and Rayford filed a Petition
5 in the Circuit Court of the city of St. Louis, Missouri ("St. Louis action") which disputed
6 ownership of the annuities. *Id.* at 5. The Complaint alleges Sandberg, a law firm, represented
7 Almajid and NAM in the state court suit. *Id.* at 5. The Complaint alleges a settlement was
8 memorialized in writing on July 10, 2007. *Id.* at 6. The Complaint alleges Hartford sent forms
9 to allow the disbursement of funds pursuant to the settlement to Sandberg for Almajid and
10 NAM to complete. *Id.* at 6. The Complaint alleges the forms were never returned. *Id.* The
11 Complaint alleges that Almajid sent a letter to Hartford stating that there was a dispute
12 between Almajid, NAM, and Sandberg. *Id.* at 7. The Complaint alleges Hartford requested
13 confirmation from Almajid and NAM that Sandberg still represented them, but received no
14 response. *Id.* The Complaint alleges that the dispute over disbursement of proceeds
15 necessitated this interpleader action by Hartford. *Id.* Hartford deposited \$36,329.06 with this
16 Court which represented Annuity 2. (ECF No. 4).

17 On March 18, 2009, this Court issued an Order discharging and dismissing Plaintiff
18 Hartford Life Insurance Company with prejudice from this action and awarding Hartford the
19 sum of \$8,500.00 as reasonable attorney's fees and costs. (ECF No. 38).

20 On August 3, 2009, Sandberg filed a Cross-claim against NAM seeking \$56,236.70 for
21 costs and legal services provided to NAM in connection with the Sandberg's representation
22 of NAM in the St. Louis action. (ECF No. 49). On September 2, 2009, Sandberg filed a
23 Request for Entry of Clerk's Default against NAM under Federal Rule of Civil Procedure
24 55(a) for NAM's failure to respond to the Complaint and the Cross-claim. (ECF No. 55). On
25 September 4, 2009, the Clerk of the Court entered default against NAM on the Cross-claim.
26 (ECF No. 58).

27 On October 2, 2009, Sandberg filed a Motion for Clerk's Default Judgment against
28 NAM pursuant to Federal Rule of Civil Procedure 55(b)(1) for the amount of \$56,236.70.

1 (ECF No. 64). Sandberg submitted the Declaration of Martin L. Daesch who stated that
2 “NAM [had] a remaining balance due to Sandberg in the amount of \$56,236.70 for costs and
3 legal services provided to NAM in the St. Louis action.” *Id.* at 4. On October 2, 2009, the
4 Clerk of the Court entered default judgment in favor of Sandberg against NAM in the amount
5 of \$56,236.70 on the Cross-claim. (ECF No. 65).

6 On May 28, 2010, Sandberg moved for summary judgment in its favor on the
7 Complaint. (ECF No.106). On October 8, 2010, this Court issued an Order granting Sanberg’s
8 motion for summary judgment and ordering Hartford to liquidate Annuity 1 and deposit it with
9 the Court.² (ECF No. 121 at 5-8, 11). This Court stated the following:

10 Pursuant to the settlement agreement, NAM was to receive the entire proceeds
11 of Annuity 1, which was at that time worth \$33,802.41. The proceeds of
12 Annuity 2, which at that time was worth \$36,030.09 were to be divided as
13 follows: \$25,000.00 to Sandberg, \$4,930.59 to NAM, \$4,246.50 to Rayford,
\$1,353.00 to Banks as partial payment of her fee as trustee, and \$1,000.00 to
Banks to be held in a separate trust checking account ‘for preparation of final
Federal and State Fiduciary Tax Returns for the Trust.’....

14 NAM did not enter an appearance in this case and has defaulted.
15 Sandberg contends that it is entitled to the proceeds awarded to defaulted
16 defendant NAM in the settlement agreement to satisfy Sandberg's default
17 judgment against NAM on Sandberg's cross claim. The Court concludes that
18 Sandberg has thus far failed to establish that Sandberg is entitled to NAM's
share of the settlement. Sandberg, Banks, and Rayford may file further
briefing as to the proper resolution of this case as to the share of the annuities
which the settlement agreement awarded to defaulted defendant NAM.

19 *Id.* at 7-8 (citations omitted).

20 In an interpleader action, the court may approve a settlement as proposed if the
21 settlement is reasonable and consistent with the record. *See U.S. Specialty Ins. Co. v. Estate*
22 *of Schurrer*, Cause No. 4:09CV353, 2010 WL 2598269 at *2 (E.D. Tex. 2010) (“Having
23 reviewed the record and heard the arguments of counsel, and recognizing the Court's equitable
24 powers in this proceeding, the Court finds that the apportionment requested by the remaining
25 should be made as agreed.”).

26 On October 28, 2010, Defendants Banks, Rayford, and Sandberg filed a Joint Response
27 to this Court’s Order. (ECF No. 124). Banks, Rayford, and Sandberg contend that they “have

28 ² On October 20, 2010, Hartford complied with this Court’s Order and deposited
\$37,128.72 with the Court which represented the liquidated Annuity 1. (ECF Nos. 122-23).

1 agreed to the proper resolution of this case with respect to the amount awarded NAM under
2 the settlement agreement” (ECF No. 124 at 2). The parties have agreed to distribute the
3 funds as follows: \$3,353.00 to Banks which includes \$2,353.00 under the settlement
4 agreement and \$1,000.00 “for her share of NAM’s funds”; \$9,475.90 to Rayford which
5 includes \$4,246.50 under the settlement agreement and \$5,229.40 “for her share of NAM’s
6 funds” as well as the balance of any funds not otherwise distributed; and \$52,236.70 to
7 Sandberg which includes \$25,000.000 under the settlement agreement and \$27,236.70 for its
8 “share of NAM’s funds.” (ECF No. 124 at 3). The parties state that they have agreed to this
9 distribution, in part, to satisfy Sandberg’s default judgment against NAM on the Cross-claim
10 which was entered by the Clerk of the Court on October 2, 2009 (ECF No. 65).

11 Upon review of the Clerk’s Entry of Default Judgment (ECF No. 65) in favor of
12 Sandberg against NAM pursuant to Federal Rule of Civil Procedure 55(b)(1), the Court has
13 concluded that entry of default judgment under Rule 55(b)(1) was not proper.

14 Federal Rule of Civil Procedure 55(b)(1) provides

15 If the plaintiff’s claim is for a sum certain or a sum that can be made
16 certain by computation, the clerk--on the plaintiff’s request, with an
17 affidavit showing the amount due--must enter judgment for that amount
 and costs against a defendant who has been defaulted for not appearing
 and who is neither a minor nor an incompetent person.

18 Fed. R. Civ. P. 55(b)(1). However, a sum is not certain “unless no doubt remains as to the
19 amount to which a plaintiff is entitled as a result of the defendant’s default.” *Franchise*
20 *Holding II, LLC v. Huntington Restaurants Group, Inc.*, 375 F.3d 922, 929 (9th Cir. 2004);
21 *KPS & Associates, Inc. v. Designs By FMC, Inc.*, 318 F.3d 1, 19-20 (1st Cir. 2003); *see*
22 *also Menier v. United States*, 405 F.2d 245, 247 n.2 (5th Cir. 1968). In *Franchise Holding*
23 *II, LLC*, plaintiff asserted a claim for breach of a loan contract. *Franchise Holding II, LLC*,
24 375 F.3d at 924. The Ninth Circuit found that the district court clerk had the authority to
25 enter default judgment for a sum certain on the grounds that plaintiff had provided the loan
26 documents and other necessary documents as well as specific formulas for determining the
27 amount owed on the loan and defendant did not provide “specifics about how [the] figures
28 were wrong or how its own calculation would differ...” *Id.* at 929.

1 In this case, Sandberg's Cross-claim of \$56,236.70 for costs and legal services was
2 not a sum certain where no doubt remains as to the amount of damages owed as a result of
3 the default. Sandberg did not submit sufficient evidence to support the amount of legal fees
4 and costs request such as time entries, billing records, or records of payments.
5 Accordingly, the entry of default judgment under Rule 55(b)(1) was not proper. The
6 Clerk's Entry of Default Judgment (ECF No. 65) is VACATED.

7 Federal Rule of Civil Procedure 55(b)(2) provides that "[i]n all other cases [other
8 than those in which the clerk of the court may enter default judgment], the party must apply
9 to the court for a default judgment."³ Fed. R. Civ. P. 55(b)(2). "The general rule of law is
10 that upon default the factual allegations of the complaint, except those relating to the
11 amount of damages, will be taken as true." *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d
12 915, 917-18 (9th Cir. 1987) (quotation omitted). "Plaintiff is required to prove all damages
13 sought in the complaint... In determining damages, a court can rely on the declarations
14 submitted by the plaintiff or order a full evidentiary hearing... If proximate cause is
15 properly alleged in the complaint, it is admitted upon default. Injury is established and
16 plaintiff need prove only that the compensation sought relates to the damages that naturally
17 flow from the injuries pled." *Philip Morris USA, Inc. v. Castworld Products, Inc.*, 219
18 F.R.D. 494, 498 (C.D. Cal. 2003).

19 CONCLUSION

20 IT IS HEREBY ORDERED that the Clerk's Entry of Default Judgment (ECF No. 65)
21 is VACATED. Sandberg may file a Motion for Entry of Default Judgment pursuant to Federal
22 Rule of Civil Procedure 55(b)(2) no later than thirty-days from the date of this Order. Plaintiff
23 must obtain a hearing date pursuant to the Local Rules of Civil Procedure before filing any

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26 ³ In addition, a default judgment in favor of one party on one claim must comply with
27 Federal Rule of Civil Procedure 54(b) which provides: "[T]he court may direct entry of a final
28 judgment as to one or more, but fewer than all, claims or parties only if the court expressly
determines that there is no just reason for delay. Otherwise, any order ... that adjudicates fewer
than ... all the parties does not end the action as to any of the claims or parties and may be
revised at any time before the entry of a judgment adjudicating all the claims and all the
parties' rights and liabilities." Fed. R. Civ. P. 54(b).

1 motion. The Clerk of the Court shall mail a copy of this Order to North American Mercantile,
2 Inc.

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4 DATED: April 11, 2011

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WILLIAM Q. HAYES
United States District Judge

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