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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

WEBSTER CAPITAL FINANCE, INC.,)
)
 Plaintiff,)
)
 vs.)
)
 MILT'S EAGLE, LLC; EAGLE JET)
 AVIATION, INC.; MILTON WOODS,)
 Individually; and ALEX PENLY, Individually,)
)
 Defendants.)
 _____)

Case No.: 2:09-cv-01367-RLH-PAL

ORDER

(Motion to Strike #52)

Before the Court is Plaintiff Webster Capital Finance, Inc. f/k/a Center Capital Corporation's **Motion to Strike Defendants' Answer to Second Amended Complaint for Money Damages** (#64, filed Mar. 1, 2011) on the basis of Defendants' previous default. The Court has also considered Defendants Milt's Eagle, LLC ("Milt's Eagle"), Eagle Jet Aviation, Inc. ("Eagle Jet"), and Alex Penly's Opposition (#65, filed Mar. 8, 2011), and Webster's Reply (#67, filed Mar. 18, 2011). The Court notes that Defendant Milton Woods is not a party to these motions and any reference to "Defendants" in this Order does not include Woods.

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1 **BACKGROUND**

2 This dispute arises from the parties' contractual agreement to purchase an airplane.
3 The Court directs the reader to its previous Order (#28, Apr. 28, 2010) for a detailed account of the
4 factual background of this case. Plaintiff filed its original Complaint (#1) on July 28, 2009.
5 Plaintiff subsequently returned executed summonses for Defendants Penly, Milt's Eagle, and
6 Eagle Jet. (Dkt. ##6, 7, 9.) These three Defendants share a great deal of common connection:
7 Milt's Eagle is a wholly-owned subsidiary of Eagle Jet and Penly serves as Milt's Eagle's resident
8 agent. On August 27, 2009, Plaintiff filed an Amended Complaint (#11), which omitted Milt's
9 Eagle because it had recently filed for bankruptcy protection. Plaintiff then served the Amended
10 Complaint on Eagle Jet and Penly by mailing it to their last known addresses. (Dkt. #14,
11 Certificate of Service.) After the applicable deadline passed, Plaintiff filed a Motion for Entry of
12 Clerk's Default (#18) against Eagle Jet and Penly. The Clerk of the Court issued an Amended
13 Entry of Default (#20) on January 5, 2010. Plaintiff filed a Motion for Default Judgment (#21)
14 against these two parties; however, the Court denied the motion because it was unable to
15 determine the total amount of damages. (Dkt. #28, Order, Apr. 20, 2010.)

16 After receiving leave of the Court, Plaintiff filed a Second Amended Complaint
17 (#47) on October 20, 2010. Plaintiff also renamed Milt's Eagle as a Defendant because its
18 bankruptcy case had been dismissed. Plaintiff served the Second Amended Complaint on Milt's
19 Eagle via personal service (Dkt. #51, Certificate of Service), and served Eagle Jet and Penly by
20 mailing it to their last known addresses (Dkt. # 50, Certificate of Service). Defendants jointly filed
21 an Answer (#54) to the Second Amended Complaint on December 14, 2010. Eagle Jet and Penly
22 filed this answer rather than asking the Court to set aside their defaults, and Milt's Eagle answered
23 four weeks after the 21-day response deadline set forth in Rule 12(a)(1)(A)(i) of the Federal Rules
24 of Civil Procedure. Plaintiff now asks the Court to strike Defendants' improper and untimely
25 Answer. For the reasons discussed below, the Court grants the motion.

26 ///

1 **DISCUSSION**

2 **I. Motion to Strike**

3 **A. Legal Standard**

4 Pursuant to Rule 12(f), a “court may strike from a pleading ... any redundant,
5 immaterial, impertinent, or scandalous matter.” Rule 7(a) identifies “pleadings” as the complaint,
6 answer, and reply, but not motions and other papers. As an alternative basis for striking improper
7 filings, a district court has “inherent power over the administration of its business. It has inherent
8 authority . . . to promulgate and enforce rules for the management of litigation” *Spurlock v.*
9 *F.B.I.*, 69 F.3d 1010, 1016 (9th Cir. 1995) (citations omitted).

10 **B. Defendants’ Answer**

11 Plaintiff argues that the Court should strike Defendants’ answer because their
12 default and failure to defend requires the Court to accept Plaintiff’s allegations as true. “When a
13 party against whom a judgment for affirmative relief is sought has failed to plead or otherwise
14 defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party’s
15 default.” Fed. R. Civ. P. 55(a). Upon entry of default, the court takes the factual allegations in the
16 non-defaulting party’s complaint as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917–18
17 (9th Cir. 1987) (citation omitted).

18 Conversely, Defendants argue that service of the Second Amended Complaint by
19 mail was improper and, therefore, ineffective as to Eagle Jet and Penly. However, Defendants’
20 arguments lack merit. Although Plaintiff amended its complaint twice after filing suit in July
21 2009, the record clearly shows that Plaintiff properly notified Defendants of those amended
22 complaints. The subsequent amendments to Plaintiff’s complaint were “pleading[s] subsequent to
23 the original complaint,” for which service was complete upon mailing to Defendants’ last known
24 address. Fed. R. Civ. P. 5(b); *Employee Painter’s Trust v. Ethan Enterprises, Inc.*, 480 F.3d 993,
25 999 (9th Cir. 2007). The amendments did not amount to “new or additional claims for relief,”
26 thus, Plaintiff was not required to effectuate personal service pursuant to Rule 4. *Id.*

1 Consequently, to the extent Eagle Jet and Penly's arguments rely on claims of ineffective service,
2 their arguments fail.

3 Defendants also assert that Milt's Eagle properly answered the Second Amended
4 Complaint because the Clerk did not enter default against Milt's Eagle. However, this argument
5 places form over substance. Milt's Eagle was well aware of Plaintiff's allegations, *i.e.* breach of
6 contract and loan guaranties, because it was personally served with the original Complaint and
7 Second Amended Complaint, and because its resident agent and parent company, Penly and Eagle
8 Jet, were still named in the case. Yet Milt's Eagle failed to answer Plaintiff's allegations until four
9 weeks after the 21-day deadline for the Second Amended Complaint and eighteen months after
10 Plaintiff first named Milt's Eagle as a Defendant. Therefore, Plaintiff would be entitled to an entry
11 of default under Rule 55(a). In addition, the Court concludes that allowing Milt's Eagle to assert
12 defenses in light of Eagle Jet and Penly's default would certainly prejudice Plaintiff at this late
13 stage. *Franchise Holding II, LLC v. Huntington Rest. Group, Inc.*, 375 F.3d 922, 925–26 (9th Cir.
14 2004). Accepting the Plaintiff's factual allegations as true, the Court therefore strikes Defendants'
15 improper answer. Nevertheless, Defendants will have the opportunity to contest the amount of
16 damages at trial. *Playboy Enterprises Intern., Inc. v. Muller*, 314 F. Supp. 2d 1037, 1039–40 (D.
17 Nev. 2004) ("The general rule of law is that upon default the factual allegations of the complaint,
18 *except those relating to the amount of damages*, will be taken as true.") (emphasis added) (quoting
19 *Geddes v. United Fin. Group*, 559 F.2d 557, 560 (9th Cir. 1977)).

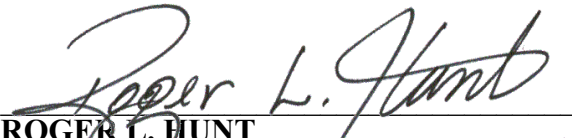
20 **CONCLUSION**

21 Accordingly, and for good cause appearing,

22 IT IS HEREBY ORDERED that Plaintiff's Motion to Strike (#64) is GRANTED.

23 The Clerk of the Court is directed to strike Defendants' Answer (#54) from the record.

24 Dated: March 25, 2011.

25 
26 **ROGER L. HUNT**
Chief/United States District Judge