

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

GUADALUPE OLVERA FAMILY TRUST,)
)
 Plaintiff(s),)
)
 v.)
)
 JARED E. SHAFER, et al.,)
)
 Defendant(s).)

Case No. 2:14-cv-01298-GMN-NJK
REPORT AND RECOMMENDATION
(Docket No. 208)

A party moving the Court for relief has a basic burden of showing that relief is properly granted. *See, e.g., Silvagni v. Wal-Mart Stores, Inc.*, 320 F.R.D. 237, 244 (D. Nev. 2017). To that end, a motion must provide factual points and legal authorities showing a basis for the relief sought. *See, e.g.,* Local Rule 7-2(d). On October 9, 2017, Plaintiff filed an 18-line motion seeking a default judgment against Defendant Patience Bristol for \$462,221.25. Docket No. 205; *see also* Docket No. 206 (affidavit). That motion was clearly defective, failing to address several of the fundamental showings required by controlling law. *See* Docket No. 207. As a courtesy to Plaintiff, the Court nonetheless denied the motion without prejudice and outlined some of the basic showings required to obtain default judgment. *See id.* at 1-2. Among those basic required showings, the Court noted that entry of default alone does not entitle a plaintiff to default judgment and, instead, district courts determine whether to exercise their discretion to enter default judgment by analyzing the seven discretionary factors identified by the Ninth Circuit. *See id.* at 1 (citing *Eitel v. McCool*, 782 F.2d 1470,1471-72 (9th Cir. 1986)). The Court

1 cautioned counsel to “carefully review the required showings for entry of default judgment and address
2 all relevant issues in any renewed motion.” *See id.* at 2; *see also id.* at 2 n.2.

3 Now pending before the Court is Plaintiff’s renewed motion seeking a default judgment against
4 Defendant Patience Bristol for \$61,770. Docket No. 208. The renewed motion continues to suffer from
5 a fundamental flaw; despite the Court expressly identifying the need to analyze the seven discretionary
6 factors identified by the Ninth Circuit and citing for Plaintiff the controlling Ninth Circuit case, the
7 renewed motion fails to identify those factors or explain how they support an exercise of discretion to
8 grant default judgment. *See id.* As the Ninth Circuit has explained, the “starting point is the general rule
9 that default judgments are ordinarily disfavored. Cases should be decided upon their merits whenever
10 reasonably possible.” *Eitel*, 782 F.2d at 1472. Because Plaintiff’s renewed motion has failed to
11 establish or even address the *Eitel* factors, Plaintiff has failed to overcome the presumption that cases
12 should be decided on the merits and the renewed motion for default judgment should be denied. *See*
13 *Messner v. Global Realty Development Corp.*, 2010 WL 11519422, at *2 (C.D. Cal. Jan. 28, 2010); *see*
14 *also Point Center Fin’l, Inc. v. HPC U.S. Fund 1, L.P.*, 2012 WL 12953463, at *2 (C.D. Cal. Dec. 12,
15 2012); *Kantor v. Monument Homes Realty & Invs., LLC*, 2009 WL 113844, at *1 (D. Ariz. Jan. 16,
16 2009).¹

17 Accordingly, the undersigned **RECOMMENDS** that the motion for default judgment against
18 Defendant Patience Bristol be **DENIED**.

19 IT IS SO ORDERED.

20 DATED: October 18, 2017

21 
22 _____
23 NANCY J. KOPPE
24 United States Magistrate Judge
25
26
27

28 _____
¹ The Court would ordinarily deny the motion without prejudice so that the factors can be addressed,
but the Court has done that already and providing a further opportunity is not warranted here.

1 **NOTICE**

2 These findings and recommendations are submitted to the United States District Judge assigned
3 to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being served
4 with these findings and recommendations, any party may file written objections with the court. Pursuant
5 to Local Rule of Practice (LR) IB 3-2(a), any party wishing to object to the findings and
6 recommendations of a magistrate judge shall file and serve *specific written objections* together with
7 points and authorities in support of those objections, within fourteen days of the date of service of the
8 findings and recommendations. The document should be captioned “Objections to Magistrate Judge’s
9 Findings and Recommendations.” The parties are advised that failure to file objections within the
10 specified time may waive the right to appeal the District Court’s Order. *Martinez v. Ylst*, 951 F.2d 1153
11 (9th Cir. 1991). The points and authorities filed in support of the specific written objections are subject
12 to the page limitations found in LR 7-3.

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28