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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

RATIONAL FT ENTERPRISES
LIMITED,

Plaintiff,

v.

ERICK ALLEN LINDGREN,

Defendant.

Case No. 2:15-cv-00179-LDG (NJK)

ORDER

Plaintiff Rational FT Enterprises moves for a default judgment (ECF No. #20) against defendant Erick Allen Lindgren. Defendant, who has never appeared in this matter, has not filed an opposition. Having considered the pleadings, moving papers and the record, the Court will grant the motion.

Plaintiff filed its complaint against Defendant on January 30, 2015, alleging claims for breach of quasi-contract, unjust enrichment, and conversion. Defendant was personally served on February 3, 2015. Defendant did not file an answer or otherwise appear. Plaintiff requested that the Clerk of the Court enter a default on February 27, 2015. The default was entered on March 3, 2015.

1 On March 20, 2015, Plaintiff filed its first motion for default judgment. Plaintiff
2 served a copy of its application on Defendant. Defendant did not respond.

3 Plaintiff filed a notice of Defendant's bankruptcy filing on June 29, 2015. As this
4 matter was automatically stayed, the Court denied the motion for default judgment without
5 prejudice.

6 On June 12, 2017, Plaintiff filed a notice that Defendant's bankruptcy proceeding
7 had been dismissed. The Court lifted the stay of this proceeding on June 15, 2017.
8 Plaintiff renewed its Motion for Default Judgment on June 20, 2017. Plaintiff served a copy
9 of its application on Defendant. Defendant did not respond.

10 The Ninth Circuit has identified the following factors which may be considered by a
11 district court in exercising discretion whether to enter a default judgment:

12 (1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff's
13 substantive claim, (3) the sufficiency of the complaint, (4) the sum of money
14 at stake in the action; (5) the possibility of a dispute concerning material facts;
15 (6) whether the default was due to excusable neglect, and (7) the strong
16 policy underlying the Federal Rules of Civil Procedure favoring decisions on
17 the merits.

18 *Eitel v. McCool*, 782 F.2d 1470, 1471–72 (9th Cir. 1986).

19 The Court begins by considering Plaintiff's complaint and the merits of its
20 substantive claims. "[T]his court must take the well-pleaded factual allegations of Cynthia's
21 cross-complaint as true." *Cripps v. Life Ins. Co. of N. Am.*, 980 F.2d 1261, 1267 (9th Cir.
22 1992). "However, it follows from this that facts which are not established by the pleadings
23 of the prevailing party, or claims which are not well-pleaded, are not binding and cannot
24 support the judgment." *Danning v. Lavine*, 572 F.2d 1386, 1388 (9th Cir. 1978).

25 Under Nevada law, "[t]he essential elements of quasi-contract are a benefit
26 conferred on the defendant by the plaintiff, appreciation by the defendant of such benefit,
and acceptance and retention by the defendant of such benefit under circumstances such
that it would be inequitable for him to retain the benefit without payment of the value

1 thereof." *Unionamerica Mortgage & Equity Trust v. McDonald*, 97 Nev. 210, 212, 626 P.2d
2 1272, 1273 (1981) (quoting *Dass v. Epplen*, 162 Colo. 60, 424 P.2d 779, 780 (Colo.
3 1967)). "Unjust enrichment occurs whenever a person has and retains a benefit which in
4 equity and good conscience belongs to another." *Id.* Under Nevada law, conversion is "a
5 distinct act of dominion wrongfully exerted over another's personal property in denial of,
6 or inconsistent with his title or rights therein or in derogation, exclusion, or defiance of
7 such title or rights." *Evans v. Dean Witter Reynolds, Inc.*, 116 Nev. 598, 606, 5 P.3d 1043,
8 1048 (2000).

9 In its complaint, Plaintiff alleges that its predecessor-in-interest, Full Tilt Poker,
10 erroneously deposited \$2,000,000 in Defendant's bank account. Officers of Full Tilt Poker
11 requested Defendant to return the erroneous deposit. Defendant did not and has not
12 returned the erroneous deposit.

13 In addition, Full Tilt Poker advanced \$531,807 to Defendant. Full Tilt Poker
14 requested repayment of the \$531,807 that was loaned to Defendant. Defendant did not
15 repay, and has not repaid, the loan. Full Tilt Poker assigned its entire right, title and
16 interest in its claims against Defendant to Plaintiff.

17 The amount of money at issue is substantial. However, that amount of money also
18 reflects the benefit that was erroneously conferred upon Defendant which Defendant did
19 not return and the amount of money that was loaned to Defendant which Defendant did not
20 repay. Plaintiff has not sought damages other than the repayment of funds erroneously
21 given to Defendant and the return of funds loaned to Defendant which he has not repaid.

22 As a result of the defendant's failure to appear, the record does not reflect a
23 possibility of dispute as to any material fact.

24 The record does not support an inference that the defendant's default resulted from
25 excusable neglect. This specific action was filed more than two years ago. The defendant
26 was personally served, but failed to appear. Plaintiff obtained a default and sought entry of

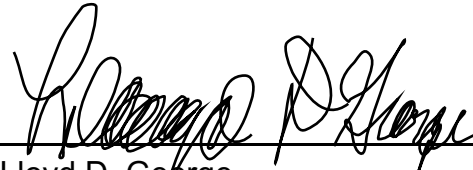
1 a default judgment. Defendant was served a copy of that first application but did not
2 respond. Upon Defendant's initiation of bankruptcy proceedings, this matter was stayed
3 and the first motion for default judgment was denied without prejudice. Following the
4 dismissal of the bankruptcy, Plaintiff brought the instant application for entry of default
5 judgment and Defendant was again served with a copy of the application. Defendant has
6 failed to respond despite these notifications.

7 Although federal policy favors decisions on the merits, the existence of Rule 55(b)(2)
8 recognizes that the entry of default judgment is appropriate in circumstances, such as this,
9 in which the defendant's failure to appear precludes litigating the issues on the merits.

10 Having considered the factors outlined in *Eitel*, the Court finds that entry of default
11 judgment against Defendant and in favor of Plaintiff in the amount of \$2,531,807 is
12 appropriate. Therefore,

13 THE COURT **ORDERS** that Plaintiff's Motion for Entry of Default Judgment (ECF
14 No. 20) is GRANTED.

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17 DATED this 17 day of October, 2017.

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20 Lloyd D. George
United States District Judge

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