

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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CLYDE MATT, an Individual; DONALD PARKER, an Individual; PHILLIP HENKLE, an Individual; ESTRELLA CARINO, an Individual,

Case No. 2:15-cv-00982-MMD-VCF
ORDER

Plaintiffs,

v.

DARYL DESHAW, an individual,

Defendant.

-and-

IMT GROUP, LLC, a Nevada limited liability company,

Nominal Defendant.

I. SUMMARY

Before the Court is Plaintiff's motion for default judgment. (ECF No. 15.) For the reasons discussed herein, Plaintiffs' motion is granted.

II. RELEVANT BACKGROUND

The following facts are taken from the verified complaint. (ECF No. 19.) Plaintiffs are majority members of IMT Group, LLC (“IMT”), which engages in the broker and sale of real estate, among other services. They allege that Defendant Daryl DeShaw (“DeShaw”), a member of IMT, appointed himself as the “Chief Operating Officer,” and engaged in deceptive conduct that harm IMT and Plaintiffs. Plaintiffs allege direct and derivative claims on behalf of IMT. The complaint alleges claims for civil RICO, breached of fiduciary duty and unjust enrichment.

1 DeShaw was served on September 23, 2015. (ECF No. 7.) He sought an extension
2 of time until December 14, 2015, to respond to the complaint (ECF No. 8), which the Court
3 granted (ECF No. 9). However, DeShaw failed to respond to the complaint or otherwise
4 appear, which led to the Clerk's entry of default. (ECF No. 13.)

5 **III. DISCUSSION**

6 Obtaining a default judgment is a two-step process governed by the Federal Rules
7 of Civil Procedure. *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986). First, “[w]hen a
8 party against whom a judgment for affirmative relief is sought has failed to plead or
9 otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter
10 the party’s default.” Fed. R. Civ. P. 55(a). Second, after the clerk enters default, a party
11 must seek entry of default judgment under Rule 55(b).

12 Here, DeShaw was properly served (ECF No. 7), and the Clerk has entered default
13 (ECF No. 13). Thus, Plaintiffs have satisfied the procedural requirement.

14 The Ninth Circuit has identified the following factors as relevant to the exercise of
15 the court’s discretion in determining whether to grant default judgment: (1) the possibility
16 of prejudice to the plaintiff; (2) the merits of the plaintiff’s substantive claims; (3) the
17 sufficiency of the complaint; (4) the sum of money at stake in the action; (5) the possibility
18 of a dispute concerning material facts; (6) whether the default was due to the excusable
19 neglect; and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring
20 decisions on the merits. *Eitel*, 782 F.2d at 1471-72. The Court finds that Plaintiffs have
21 satisfied the *Eitel* factors and agrees with Plaintiffs that default judgment should be
22 entered.

23 While Plaintiffs ask for damage in the amount of \$12,000 on behalf of each Plaintiff
24 for a total of \$48,000 (ECF No. 15 at 4), Plaintiffs offer no evidence to support their
25 request. The verified complaint does not allege a specific amount of amount. At a
26 minimum, each Plaintiff must submit an affidavit identifying the amount of damage and
27 explaining the evidence or basis for Plaintiff’s request for that amount.

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1 **IV. CONCLUSION**

2 It is therefore ordered that Plaintiffs' motion for default judgment (ECF No. 15) is
3 granted. It is further ordered that before the Court awards damages, Plaintiffs must file a
4 supplemental affidavit from each Plaintiff that identifies the amount of damage requested
5 and the evidence supporting that request. The supplemental affidavits must be filed within
6 thirty (30) days

7 DATED THIS 10th day of January 2018.

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10 MIRANDA M. DU
11 UNITED STATES DISTRICT JUDGE

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