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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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| <p>U.S. BANK, NATIONAL ASSOCIATION</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>WARM SPRINGS RESERVE OWNERS ASSOCIATION; SFR INVESTMENTS POOL 1, LLC; ALESSI & KOENIG, LLC</p> <p style="text-align: right;">Defendants.</p> <p>SFR INVESTMENTS POOL 1, LLC Counter Claimant</p> <p style="text-align: center;">v.</p> <p>U.S. BANK, NATIONAL ASSOCIATION</p> <p style="text-align: center;">Counter Defendant</p> | <p>Case No.: 2:16-cv-00844-RFB-BNW</p> <p>ORDER</p> |
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I. INTRODUCTION

Before the Court are Defendant SFR Investments Pool 1, LLC’s (“SFR”) Motion for Reconsideration and Motion for Default Judgment. ECF Nos. 85, 90. For the following reasons, the Court grants these motions.

II. PROCEDURAL BACKGROUND

US Bank filed its complaint on April 14, 2016. ECF No. 1. On March 25, 2019, SFR answered and asserted crossclaims against cross-claimant John Foley and counterclaims against U.S. Bank for quiet title and a preliminary and permanent injunction enjoining U.S. Bank from any sale or transfer that would affect title to the property. ECF No. 42. John Foley was served summons and the SFR’s Answer on March 27, 2019 but n ever answered the crossclaims. ECF No. 45. U.S. Bank filed a motion for summary judgment on June 19, 2019. ECF No. 57. The

1 motion was fully briefed. ECF Nos. 59,66,69. On July 8, 2019, SFR also moved for summary
2 judgment. ECF No. 65. This motion was fully briefed. ECF Nos. 68, 71. SFR filed a motion for
3 Clerk's Entry of Default on March 25, 2020 and it was entered on March 26, 2020. ECF Nos.
4 81,82. On March 31, 2020, this Court granted U.S Bank's motion for partial summary as to tender,
5 denied SFR's motion for summary judgment, and dismissed all other claims and counterclaims.
6 ECF No. 31. On April 3, 2020, SFR filed a motion for default judgment against Cross-Defendant,
7 John Foley. ECF No. 85. SFR filed a Motion for Partial Reconsideration on April 28, 2020. ECF
8 No. 90.

9 **III. LEGAL STANDARD**

10 **a. Motion for Reconsideration**

11 "Whether or not to grant reconsideration is committed to the sound discretion of the court."
12 Navajo Nation v. Confederated Tribes and Bands of the Yakama Indian Nation, 331 F.3d 1041,
13 1046 (9th Cir. 2003). However, "a motion for reconsideration should not be granted, absent highly
14 unusual circumstances, unless the district court is presented with newly discovered evidence,
15 committed clear error, or if there is an intervening change in the controlling law." Marlyn
16 Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co., 571 F.3d 873, 880 (9th Cir. 2009) (internal
17 quotation and citation omitted). A motion for reconsideration "may not be used to raise arguments
18 or present evidence for the first time when they could reasonably have been raised earlier in the
19 litigation." Id. (internal quotation and citation omitted). Moreover, "[m]otions for reconsideration
20 are disfavored. A movant must not repeat arguments already presented unless (and only to the
21 extent) necessary to explain controlling, intervening law or to argue new facts. A movant who
22 repeats arguments will be subject to appropriate sanctions." LR 59-1.

24 **b. Default Judgment**

25 The granting of a default judgment is a two-step process directed by Rule 55 of the Federal
26 Rules of Civil Procedure. Fed. R. Civ. P. 55; Eitel v. McCool, 782 F.2d 1470, 1471 (9th Cir. 1986).
27 The first step is an entry of clerk's default based on a showing, by affidavit or otherwise, that the
28 party against whom the judgment is sought "has failed to plead or otherwise defend." Fed. R. Civ.

1 P. 55(a). The second step is default judgment under Rule 55(b), a decision which lies within the
2 discretion of the Court. Aldabe v. Aldabe, 616 F.2d 1089, 1092 (9th Cir. 1980). Factors which a
3 court, in its discretion, may consider in deciding whether to grant a default judgment include: (1)
4 the possibility of prejudice to the plaintiff, (2) the merits of the substantive claims, (3) the
5 sufficiency of the complaint, (4) the amount of money at stake, (5) the possibility of a dispute of
6 material fact, (6) whether the default was due to excusable neglect, and (7) the Federal Rules'
7 strong policy in favor of deciding cases on the merits. Eitel, 782 F.2d at 1471–72. If an entry of
8 default is made, the Court accepts all well-pleaded factual allegations in the complaint as true;
9 however, conclusions of law and allegations of fact that are not well-pleaded will not be deemed
10 admitted by the defaulted party. DirecTV, Inc. v. Hoa Huynh, 503 F.3d 847, 854 (9th Cir. 2007).
11 Additionally, the Court does not accept factual allegations relating to the amount of damages as
12 true. Geddes v. United Fin. Grp., 559 F.2d 557, 560 (9th Cir. 1977). Default establishes a party's
13 liability, but not the amount of damages claimed in the pleading. Id.

14 **IV. DISCUSSION**

15 **a. Motion for Reconsideration**

16 SFR argues that this Court should not have dismissed all remaining claims, including
17 SFR's crossclaims against Foley for quiet title and injunctive relief, its March 31, 2020. This Court
18 agrees. Although this Court found that the Deed of Trust survived the foreclosure sale and SFR
19 acquired the property subject to the Deed of Trust, it erroneously dismissed all the crossclaims
20 against the original homeowner, John Foley. Therefore, this Court grants SFR's motion for partial
21 reconsideration. Marlyn Nutraceuticals, Inc., 571 F.3d at 880.

22 **b. Motion for Default Judgment**

23 In considering the seven Eitel factors, the Court finds default judgment against John Foley
24 is warranted. The first and sixth factors favor granting default judgment because the Cross-
25 Defendants failed to defend—or appear at all in this matter—since being served with the summons
26 and the amended complaint. Foley's failure to appear for the past four years prejudices SFR by
27 preventing it from determining injunctive relief against Foley. Further, Foley's failure to appear
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1 for a substantial period of time demonstrates the lack of excusable neglect. And while the seventh
2 factor generally counsels against the granting of default judgment, Foleys' failure to appear
3 prevents the Court from determining the crossclaims on its merits. The second and third factors
4 also favor a grant of default judgment. SFR seeks quiet title and injunctive relief against Foley.
5 There are sufficient exhibits attached to this instant motion demonstrating Plaintiff is entitled to
6 the relief requested. Thus, Defendant SFR has demonstrated its claims are meritorious.

7 Finally, there is no money at stake to counsel against the grant of default judgment. Thus,
8 the Court finds the Eitel factors favor the grant of default judgment against Cross-Defendants.

9 **V. CONCLUSION**

10 **IT IS THEREFORE ORDERED** that Defendant SFR Investments Pool 1, LLC's Motion
11 for Partial Reconsideration (ECF No. 90) and Motion for Default Judgment (ECF No. 85) are
12 GRANTED.

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14 DATED: November 2, 2020.

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17 RICHARD F. BOULWARE, II
18 UNITED STATES DISTRICT
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