

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

GREENTREE FINANCIAL GROUP, INC.,)
)
Plaintiff,)
vs.)
WORLD NATION LIVE)
ENTERTAINMENT, INC.)
Defendant.)

Case No.: 2:16-cv-00972-GMN-NJK

ORDER

Pending before the Court is the Objection, (ECF No. 28), filed by Plaintiff Greentree Financial Group, Inc. (“Plaintiff”), which objects to the Honorable Magistrate Judge Nancy J. Koppe’s Report and Recommendation (“R&R”), (ECF No. 27). Interest Party Sheldon Drobny filed a Response to the Objection, (ECF No. 29), and Plaintiff filed a Supplement, (ECF No. 30). For the reasons stated herein, the R&R is **ADOPTED in full**.

I. BACKGROUND

On July 24, 2017, the Court denied Plaintiff’s Renewed Motion for Default Judgment, (ECF No. 23), for failure to satisfy its burden of showing proper service had been effectuated. (Order, ECF No. 25). The Court ordered that, to the extent Plaintiff continued to seek default judgment, it had to file its second renewed motion for default judgment by August 7, 2017. (*Id.*). Plaintiff failed to file a motion by this date.

On August 16, 2017, the Court issued an Order to Show Cause, requiring Plaintiff to demonstrate why the case “should not be dismissed for failure to effectuate service and/or failure to prosecute.” (Order to Show Cause, ECF No. 26). The Court gave Plaintiff until August 23, 2017, to file its response. (*Id.*). In the alternative, the Court permitted Plaintiff to file a second renewed motion for default judgment by this date. (*Id.*). Plaintiff failed to do either. Accordingly, on August 25, 2017, Judge Koppe issued an R&R recommending that

1 Plaintiff's case be dismissed for failure to effectuate service and/or failure to prosecute. (R&R,
2 ECF No. 27).

3 **II. LEGAL STANDARD**

4 A party may file specific written objections to the findings and recommendations of a
5 United States Magistrate Judge made pursuant to Local Rule IB 1-4. 28 U.S.C. § 636(b)(1)(B);
6 D. Nev. R. IB 3-2. Upon the filing of such objections, the Court must make a *de novo*
7 determination of those portions to which objections are made. *Id.* The Court may accept, reject,
8 or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge.
9 28 U.S.C. § 636(b)(1); D. Nev. IB 3-2(b).

10 **III. DISCUSSION**

11 In its Objection, Plaintiff argues that the Court should set aside the R&R because there
12 exists excusable neglect under Federal Rule of Civil Procedure ("FRCP") 6(b) for its failure to
13 respond to Judge Koppe's prior Orders. (Obj. 4:2-5:28, ECF No. 28). Under FRCP 6(b), the
14 Court may, for good cause, grant an extension of time "on a motion made after the time has
15 expired if the party failed to act because of excusable neglect." Fed. R. Civ. P. 6(b)(1)(B).

16 According to Plaintiff, "[w]hen Plaintiff reviewed the docket after the July 27, 2017
17 order, it became clear that World Nation's registered agent Clifford Neuman had resigned as its
18 registered agent on May 16, 2016." (*Id.* 4:9-11). Based on this discovery, Plaintiff claims that
19 "it was unable to answer the Court's Order by the due date of August 23, 2017 as it was not
20 possible to remedy this service issue that quickly." (*Id.* 4:16-18). Plaintiff's argument fails for
21 numerous reasons.

22 First, to date, Plaintiff has not filed a motion to extend time as required under FRCP 6(b)
23 and the local rules. The instant Objection is Plaintiff's first mention of any need for additional
24 time. Second, Plaintiff's explanation that it was "unable to answer the Court's Order" is
25 without merit. While Plaintiff claims it did not have enough time to properly effectuate service

1 of process before the Court's August 23, 2017 deadline, that is not a reason for failing to
2 respond to the Court's Orders and not timely seeking an extension of deadlines. Indeed,
3 Plaintiff had two separate opportunities to comply with Judge Koppe's rulings and failed to
4 abide by both deadlines. (See Order, ECF No. 25) (permitting Plaintiff to file a renewed
5 motion for default judgment); (Order to Show Cause, ECF No. 26) (directing Plaintiff to
6 demonstrate why the case should not be dismissed "for failure to effectuate service and/or
7 failure to prosecute"). Whether it was "possible to remedy" the service issues by the show
8 cause deadline is a separate issue from Plaintiff's obligation to comply with the Court's Orders.
9 Accordingly, the Court finds no basis to depart from the R&R.¹

10 **IV. CONCLUSION**

11 **IT IS HEREBY ORDERED** that the R&R, (ECF No. 27), is **ADOPTED in FULL**.

12 **IT IS FURTHER ORDERED** that this action is **DISMISSED without prejudice** for
13 failure to effectuate service and/or failure to prosecute.

14
15 **DATED** this 23 day of September, 2019.

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19 _____
20 Gloria M. Navarro, District Judge
21 United States District Court
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25 ¹ Plaintiff argues that adopting the R&R would "foreclose [its] ability to recover on a legitimate breach of contract claim" and also "punish [it] due to no fault of its own." (Obj. 5:16-18). Plaintiff is mistaken. Adopting the R&R results in dismissal *without* prejudice, and thus Plaintiff is not foreclosed from pursuing its claims after complying with proper procedures.