

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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4 Steven Ringelberg,
5 Plaintiff

6 v.

7 Vanguard Integrity Professionals-Nevada, Inc., et al.,
8 Defendants

2:17-cv-01788-JAD-PAL

**Order Denying Motions for Default
Judgment and to Strike**

[ECF Nos. 32, 38]

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10 Plaintiff Steven Ringelberg filed a “Motion for Entry of Judgment” asking this court to enter
11 judgment against the defendants under FRCP 55(b)(2) as to liability and “set a schedule for
12 discovery and a trial on damages only” because the defendants have not answered his second
13 amended complaint.¹ There are multiple problems with this request, each of which independently
14 requires its denial.

15 First, plaintiff skipped a required step. Rule 55 of the Federal Rules of Civil Procedure,
16 which governs defaults and default judgments, requires that a default be entered before a default
17 judgment can be requested.² Because no default against the defendants has been requested or
18 entered, plaintiff’s request for a default *judgment* is early.

19 Second, even if I construe this motion as one for entry of default, it lacks merit. Rule 55(a)
20 directs the Clerk to default a party who “has failed to plead *or otherwise defend*.”³ “A motion to
21 dismiss constitutes defending an action within the meaning of this rule even if the defendants have

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23 ¹ ECF No. 32.

24 ² As the Ninth Circuit Court of Appeals has stated, Rule 55 requires a “two-step process” consisting
25 of: (1) seeking a clerk’s entry of default, and (2) filing a motion for the entry of default judgment.
26 *See, e.g., Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986) (“Eitel apparently fails to understand
27 the two-step process required by Rule 55.”); *accord Symantec Corp. v. Global Impact, Inc.*, 559 F.3d
922, 923 (9th Cir. 2009) (noting that Rules 55(a) and (b) provide a two-step process for obtaining a
default judgment).

28 ³ Fed. R. Civ. P. 55(a) (emphasis added).

1 not filed answers to the complaint.”⁴ And the defendants have filed motions to dismiss, entered into
2 a stipulation to transfer this case from the District Court for the District of Columbia to this district,
3 and filed a new motion to dismiss the same day that plaintiff’s motion for judgment was filed.⁵
4 These filings demonstrate an intention to defend and preclude the entry of default.

5 Finally, before granting a request for default judgment, the court must evaluate several factors
6 including: “(1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff’s substantive
7 claim, (3) the sufficiency of the complaint, (4) the sum of money at stake in the action; (5) the
8 possibility of a dispute concerning material facts; (6) whether the default was due to excusable
9 neglect, and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions
10 on the merits.”⁶ Plaintiff has not addressed these factors at all, let alone demonstrated why they
11 favor default judgment here. I thus deny the motion for default judgment.

12 Plaintiff has also moved to strike the defendants’ motion to dismiss, arguing that it is
13 procedurally improper.⁷ I find that this procedural objection should be included as an argument in
14 opposition to the motion to dismiss⁸, not as a motion to strike the motion. Accordingly, I deny the
15 motion to strike and direct the plaintiff to simply include this procedural objection as an argument in
16 his opposition to the motion to dismiss.

17 **ORDER**

18 Accordingly, IT IS HEREBY ORDERED that Plaintiff’s Motion for Judgment [ECF No. 32]
19 **is DENIED;**

20 IT IS FURTHER ORDERED that Plaintiff’s Motion to Strike Defendants’ Rule 12(b)(6)
21 Motion and Any Supporting Pleadings or Exhibits [ECF No. 38] **is DENIED.** Plaintiff is instructed

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24 ⁴ *Song v. Deeds*, 947 F.2d 951 (9th Cir. 1991) (unpublished).

25 ⁵ ECF Nos. 15, 20, 21, 34.

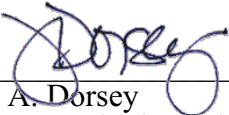
26 ⁶ *Eitel v. McCool*, 782 F.2d at 1471–72.

27 ⁷ ECF No. 38.

28 ⁸ ECF No. 34.

1 to incorporate the subject of the motion to strike into his opposition to the motion to dismiss [ECF
2 No. 34].

3 Dated this 4th day of August, 2017

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6 Jennifer A. Dorsey
7 United States District Judge
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