

2019 WL 1089132

United States District Court, C.D. California.

UNITED STATES

v.

Masud SARSHAR

Case No. 2:18-cv-07751-RGK-MAA

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Filed 02/19/2019**Attorneys and Law Firms**

Andrew Pribe, AUSA - Office of US Attorney, Los Angeles,
CA, for United States.

Proceedings: (IN CHAMBERS) Order
Re: Motion for Default Judgment [DE 13]

R. GARY KLAUSNER, UNITED STATES DISTRICT
JUDGE

I. INTRODUCTION

*1 On October 9, 2018, defendant Masud Sarshar ("Defendant") was served with a summons and complaint. Because Defendant did not respond, the clerk entered default against Defendant on November 8, 2018. Plaintiff United States ("Plaintiff") now moves the Court to enter default judgment (DE 13).

For the following reasons, the Court **GRANTS** Plaintiff's motion.

II. FACTUAL BACKGROUND

Plaintiff alleges the following:

Defendant is a United States citizen. For the tax years between 2006 and 2012, Defendant had foreign accounts subject to the reporting requirement of 31 U.S.C. § 5314 as implemented under 31 C.F.R. §§ 1010.350(a) and 1010.306(c). Defendant, however, willfully failed to disclose the entirety of his foreign accounts during those years. On February 22, 2017, Defendant executed an agreement with the Internal Revenue Service ("IRS") in which he agreed that he was liable for a penalty of \$18,242,537.65 under 31 U.S.C. § 5321(a)(5) for failure to file Reports of Foreign Bank and Financial Accounts ("FBARs") for the calendar years of 2006 through

2012. On March 28, 2017, the IRS assessed an FBAR penalty of \$18,242,537.65 against Defendant.

As of March 13, 2018, the outstanding balance of Defendant's liability is \$18,853,787.60, including interest and the late-payment penalty provided under 31 U.S.C. § 3712(e)(2).

III. JUDICIAL STANDARD

Federal Rule of Civil Procedure ("Rule") 55(b) allows for a court to enter default judgment following the Clerk's entry of default when a party has failed to plead or otherwise defend a case. The Clerk's entry of default, however, does not entitle a plaintiff to a court-ordered judgment. *See Draper v. Coombs*, 792 F.2d 915, 924–25 (9th Cir. 1986). Whether to grant or deny judgment is within a court's discretion. *Id.*

In general, once default has been entered by the court clerk, all factual allegations in the complaint, except those relating to the amount of damages, will be taken as true. *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917–18 (9th Cir. 1987).

IV. DISCUSSION**A. Plaintiff Has Satisfied the Procedural Requirements of Default Judgment**

Rule 55 allows a court to enter default judgment following entry of default by the clerk when a party has failed to plead or otherwise defend a case. Fed. R. Civ. P. 55(b).

Applications for default judgment must set forth the following information: (1) when and against what party the default was entered; (2) the identification of the pleading to which default was entered; (3) whether the defaulting party is an infant or incompetent and if so, whether that person is represented by a general guardian, committee, conservator, or other representative; (4) that the Servicemembers Civil Relief Act does not apply; and (5) that notice has been served on the defaulting party, if required by Fed. R. Civ. P. 55(b)(2). Fed. R. Civ. P. 55; C.D. Cal. L.R. 55-1.

Based on Plaintiff's motion and the attached declaration, the Court finds that Plaintiff has met the procedural requirements of Rule 55.

B. The *Eitel* Factors Weigh in Favor of Default Judgment

*2 The Ninth Circuit has enumerated the following factors (collectively, the “*Eitel* factors”) that a court should consider in determining whether to grant default judgment: (1) the possibility of prejudice to the plaintiff; (2) the merits of the plaintiff’s substantive claim; (3) the sufficiency of the complaint; (4) the sum of money at stake in the action; (5) the possibility of a dispute concerning material facts; (6) whether the default was due to excusable neglect; and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits. *Eitel v. McCool*, 782 F.2d 1470, 1471–72 (9th Cir. 1986).

*1. Merits of Plaintiff’s Substantive
Claims and Sufficiency of the Complaint*

After entry of default, the Court assumes all well-pleaded factual allegations in the complaint are true, except those concerning damage awards. *Fair Housing of Marin v. Combs*, 285 F.3d 899, 906 (9th Cir. 2002). Accordingly, the Court assesses whether the well-pleaded allegations in the complaint show that Plaintiff is entitled to reduce Defendant’s FBAR penalty to judgment.

Section 5314 of Title 31 of the United States Code authorizes the Secretary of Treasury to require citizens of the United States “to keep records, file reports, or keep records and file reports, when the resident, citizen, or person makes a transaction or maintains a relation to any person with a foreign financial agency.” 31 U.S.C. § 5314(a). Specifically, “[e]ach United States person having a financial interest in, or signature or other authority over, a bank, securities, or other financial account in a foreign country shall report such relationship to the Commissioner of the Internal Revenue for each year in which such relationship exists.” 31 C.F.R. § 1010.350(a). Willful violations of these reporting requirements may result in a penalty of either (1) \$100,000 or (2) 50% of the balance in the account at the time of the violation, whichever is greater. 31 U.S.C. § 5321(a)(5)(C) (i). Finally, the Government is authorized to sue to recover a penalty under this section at any time before the end of the two-year period beginning on the date the penalty was assessed. 31 U.S.C. § 5321(b)(2)(A).

Plaintiff attaches to its complaint the FBAR agreement in which Defendant agreed to the penalty of \$18,242,537.65 and waived all defenses to assessment and collection of the penalty, including related interest. (See Pl.’s Compl. 6–7, ECF No. 1.) Defendant signed the agreement on February 27, 2017. (*Id.*) Accordingly, the Court finds that Plaintiff’s claim is meritorious and sufficiently pleaded.

2. Remaining Eitel Factors

The remainder of the *Eitel* factors also support default judgment. First, if the Motion were to be denied, Plaintiff would likely be left without a remedy given Defendant’s entry of default. See *PepsiCo., Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1175 (C.D. Cal. 2002). Second, because Defendant has not responded to this lawsuit, it is unknown whether there is a possibility of dispute concerning material facts. Third, there is no evidence in the record that Defendant’s failure to respond to the lawsuit was due to excusable neglect. This action was filed five months ago, and Defendant was properly served. Fourth, with respect to the sum of money being sought by Plaintiff, courts examine the sum of money at stake “in relation to the seriousness of defendant’s conduct.” *Craigslist, Inc. v. Naturemarket, Inc.*, 694 F. Supp. 2d 1039, 1060 (N.D. Cal. 2010). Plaintiff asks for an FBAR judgment of \$18,853,787.60. Although there is a great deal of money at stake, given Defendant’s FBAR agreement and the text of the statute, the Court finds the amount sought is not disproportionately large relative to the nature of the infringement. Finally, although the seventh *Eitel* factor favors decisions on the merits and weighs against default judgment, this factor is not dispositive.

V. CONCLUSION

*3 In light of the foregoing, the Court **GRANTS** the Motion for Default Judgment in the amount of \$18,853,787.60.

IT IS SO ORDERED.

All Citations

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