

APN# N/A

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00152945202209835870080086

KAREN ELLISON, RECORDER

Affidavit Regarding Recorded Judgment, Default Judgment, Order

Title of Document (required)

------(Only use if applicable)-----

The undersigned hereby affirms that the document submitted for recording DOES contain personal information as required by law: (check applicable)

Affidavit of Death – NRS 440.380(1)(A) & NRS 40.525(5)

Judgment – NRS 17.150(4)

Military Discharge – NRS 419.020(2)


Signature

Nathan M. Jenkins

Printed Name

This document is being (re-)recorded to correct document # _____, and is correcting

NATHAN M. JENKINS, ESQ. (560)
JENKINS LAW FIRM
1895 Plumas Street, Suite 2
Reno, NV 89509
Telephone: (775)-829-7800
Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

TRUSTEES of the NORTHERN NEVADA
LABORERS HEALTH & WELFARE TRUST
FUND, et al.,

Case No. 3:17-cv-00577-RCJ-CLB

Plaintiffs,

vs.

KENNETH M. MERCURIO, an individual;
FAST-TRACK SERVICES LTD, a Nevada
limited liability company; ALLEGHENY
CASUALTY COMPANY, a Pennsylvania
corporation; and DOES 1 -10,

Defendants.

_____ /

AFFIDAVIT REGARDING RECORDED JUDGMENT

STATE OF NEVADA)
)SS
COUNTY OF WASHOE)

NATHAN M. JENKINS, ESQ., being first duly sworn, deposes and says:

1. I am an attorney at Jenkins Law Firm. Based upon records in the file for this matter, I have personal knowledge of the matters set forth herein and can competently testify

thereto.

2. This Affidavit is given pursuant to NRS 17.150 in connection with the recording of that certain Default Judgment and Order that was entered on March 2, 2022 in the United States District Court, District of Nevada, certified by the clerk of the court.

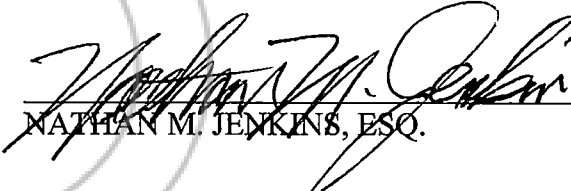
3. The Judgment Debtor is KENNETH M. MERCURIO. The last known address of Judgment Debtor KENNETH M. MERCURIO is 14230 Powder River Ct, Reno, Nevada 89511.

4. The last four digits of Judgment Debtor KENNETH M. MERCURIO's social security number are 6317. Judgment Debtor KENNETH M. MERCURIO's driver's licence number is unknown to me.

5. Judgment Debtor KENNETH M. MERCURIO's date of birth is September 19, 1967.

6. I do hereby swear under penalty of perjury that the assertions of this affidavit are true and correct to the best of my knowledge.

FURTHER YOUR AFFIANT SAYETH NOT.



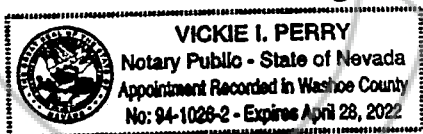
NATHAN M. JENKINS, ESQ.

Subscribed and Sworn to before me

this 6 day of April, 2022.



NOTARY PUBLIC

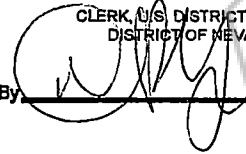


AO450 (NVD Rev. 2/18) Judgment in a Civil Case

MAR 30 2022

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

I hereby attest and certify on
that the foregoing document is a full, true
and correct copy of the original on file in my
legal custody.

By  Deputy Clerk

CLERK, U.S. DISTRICT COURT
DISTRICT OF NEVADA



TRUSTEES OF THE NORTHERN NEVADA
LABORERS HEALTH & WELFARE TRUST
FUND, et al.,

Plaintiffs,

v.

KENNETH M. MERCURIO, et al.,

Defendants.

DEFAULT JUDGMENT

Case Number: 3:17-cv-00577-RCJ-CLB

Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

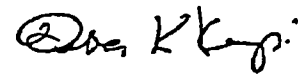
Decision by Court. This action came for consideration before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that pursuant to this court's order entered March 2, 2022 (ECF No. 171), Plaintiffs' Motion for Default Judgment as to Defendant Mercurio (ECF No. 170) is **GRANTED**. **IT IS FURTHER ORDERED** that judgment is hereby entered accordingly and this case is closed.

Date: March 2, 2022



CLERK OF COURT



Signature of Clerk or Deputy Clerk

MAR 30 2022

I hereby attest and certify on _____
that the foregoing document is a full, true
and correct copy of the original on file in my
legal custody.

CLERK, U.S. DISTRICT COURT
DISTRICT OF NEVADA

By _____ Deputy Clerk



UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

TRUSTEES OF THE NORTHERN NEVADA)
LABORERS HEALTH & WELFARE TRUST)
FUND, *et al.*,

Plaintiffs,

vs.

KENNETH M. MERCURIO, *et al.*,

Defendants.

3:17-cv-00577-RCJ-CLB

ORDER

Plaintiffs filed this case in 2017 and served Defendant Mercurio in 2018. Despite these facts, Defendant Mercurio has not responded in this case to date. This Court has since issued summary judgment in favor of Plaintiffs against other defendants and default against Defendant Mercurio. Plaintiffs now move to enter default judgment against Defendant Mercurio finally resolving this case. No opposition has been filed to this motion. The Court grants it and closes the case.

LEGAL STANDARD

Federal Rule of Civil Procedure 55(b)(2) permits a plaintiff to obtain default judgment if the clerk previously entered default based on a defendant's failure to defend. After entry of default, the complaint's factual allegations are taken as true, except those relating to damages. *TeleVideo Sys., Inc. v. Heidental*, 826 F.2d 915, 917-18 (9th Cir. 1987). "However, necessary facts not

1 contained in the pleadings, and claims which are legally insufficient, are not established by de-
2 fault.” *Cripps v. Life Ins. Co. of N. Am.*, 980 F.2d 1261, 1267 (9th Cir. 1992). The court may
3 require a plaintiff to provide additional proof of facts or damages in order to ensure that the re-
4 quired relief is appropriate. *LHF Prods., Inc. v. Boughton*, 299 F. Supp. 3d 1104, 1113 (D. Nev.
5 2017).

6 Based on the available facts, “a district court has an affirmative duty to look into its juris-
7 diction over both the subject matter and the parties” before granting a default judgment. *In re Tuli*,
8 172 F.3d 707, 712 (9th Cir. 1999). Once satisfied on the issue of jurisdiction, whether to grant a
9 motion for default judgment under Rule 55(b)(2) is a matter of discretion to a court. *Eitel v.*
10 *McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986). The Ninth Circuit has pointed to seven factors that
11 a court should consider it making this determination:

12 (1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff’s substan-
13 tive claim, (3) the sufficiency of the complaint, (4) the sum of money at stake in the
14 action; (5) the possibility of a dispute concerning material facts; (6) whether the
15 default was due to excusable neglect, and (7) the strong policy underlying the Fed-
16 eral Rules of Civil Procedure favoring decisions on the merits.

17 *Id.* at 1471–72.

18 ANALYSIS

19 Assuming the allegations of the operative complaint, the Court has jurisdiction over the
20 subject matter of this case and Defendant Mercurio. As for subject matter, Plaintiffs’ raise federal
21 claims under ERISA giving this Court federal question jurisdiction under 28 U.S.C. § 1331 and
22 related state law claims, this Court has supplemental jurisdiction under 28 U.S.C. § 1367. As for
23 personal jurisdiction, Defendant Mercurio was at all times a Nevada resident conducting business
24 in the District of Nevada. (ECF No. 43 ¶ 5.)

Since this Court has jurisdiction, it turns to the merits of whether default judgment should
be entered. Plaintiffs have filed facially valid proof of service upon Defendant Mercurio on July

1 28, 2018. (ECF No. 45.) The Court entered default against Defendant Mercurio on September 5,
2 2018. (ECF Nos. 56, 57.) To date, Defendant Mercurio has failed to file any response.

3 Applying the seven *Eitel* factors to this case, default judgment is proper:

4 The first factor favors the entry of a default judgment. Plaintiffs have been actively litigat-
5 ing this case for years, and Defendant Mercurio has failed to ever respond. If Plaintiffs cannot get
6 a default judgment Defendant Mercurio, they would be “without other recourse for recovery.”
7 *Pepsico, Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002).

8 The second and third factors also favor granting the motion. The complaint states colorable
9 claims as this Court has ruled that summary judgment was proper in favor of Plaintiffs. (ECF No.
10 161.)

11 The fourth factor favors granting the motion. The sum of money at stake is reasonable in
12 relation to the alleged misconduct. While it is in the hundreds of thousands of dollars, it is the
13 statutory amount required by ERISA.

14 The fifth factor favors granting the motion. While it is possible that Defendant Mercurio
15 would have challenged the allegations, he has not raised any defense in the years this litigation
16 pended, and the Court found summary judgment appropriate.

17 The sixth factor favors granting the motion. There is no evidence in the record that De-
18 fendant Mercurio’s failure to appear was the result of excusable neglect.

19 The seventh factor disfavors granting the motion. This factor always weighs against the
20 entry of default judgment as the courts desire a decision on the merits. However, this factor alone
21 is not sufficient to outweigh the other factors.

22 Lastly, the Court considers the amount to enter for default judgment. As this Court previ-
23 ously found the amount of damages that Plaintiffs are due, a hearing on this issue is not necessary.
24 Subtracting the bond amounts already paid to Plaintiffs, they have presented a list of damages that

1 Plaintiffs are still owed as of the time filing of this motion:

- 2 • \$5,904.67 to Trustees of the Cement Masons Annuity Trust Fund for Northern Nevada;
- 3 • \$32,333.78 to Trustees of the Cement Masons Joint Apprenticeship and Training Trust Fund;
- 4 • \$241,933.49 to Trustees of the Northern Nevada Laborers Health and Welfare Trust Fund;
- 5 • \$144,359.12 to Trustees of the Laborers Pension Trust Fund for Northern Nevada;
- 6 • \$29,493.77 to Trustees of the Laborers Training Fund for Northern Nevada;
- 7 • \$35,672.58 to Trustees of the Northern Nevada Operating Engineers Health and Welfare Trust Fund; and
- 8 • \$58,000.37 to Trustees of the Pension Trust for Operating Engineers.

9 The Court orders that judgment be entered reflecting these figures. In addition to them, Plaintiffs
10 are further entitled to interest of these figures for the time in between the filing of the motion and
11 now, post-judgment interest, and attorney fees.

12 **CONCLUSION**

13 IT IS HEREBY ORDERED that Plaintiffs' Motion for Default Judgment (ECF No. 170)
14 is GRANTED.

15 IT IS FURTHER ORDERED that the Clerk shall enter judgment accordingly and close
16 the case.

17 IT IS SO ORDERED.

18 Dated March 2, 2022.

19 
20 _____
21 ROBERT C. JONES
22 United States District Judge
23
24