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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	CASE NO. CV 18-2106-R
)	
Plaintiff,)	ORDER GRANTING PLAINTIFF’S
)	MOTION FOR DEFAULT JUDGMENT
v.)	
)	
MATTHEW C. BERRY; et al.,)	
)	
Defendants.)	
_____)	

Before the Court is Plaintiff United States of America’s (“Plaintiff”) Motion for Default Judgment, filed on February 26, 2019. (Dkt. No. 19). This Court took the matter under submission on April 12, 2019.

The United States brought this suit pursuant to 26 U.S.C. §§ 7401 and 7403 to reduce tax assessments against Defendant Matthew C. Berry (“Defendant” or “Berry”) to judgment and to foreclose its tax liens on real property owned by Berry. On November 30, 2018, the Clerk of Court entered Berry’s default after he failed to respond to the Complaint. (Dkt. No. 14). The United States seeks: (1) entry of default judgment against Berry pursuant to Federal Rule of Civil Procedure 55(b); (2) entry of judgment on its claim to reduce to judgment tax assessments made against Berry; (3) to foreclose its tax liens on real property owned by Berry in Rialto, California; and (4) an order of sale of the property. The United States also seeks entries of default judgment with respect to Defendants City of Rialto, the California Franchise Tax Board (“FTB”), and First

1 American Title Company, which were identified in the complaint as possible claimants to the
2 property. Their defaults were entered on November 30, 2018. (Dkt. Nos. 15-17).

3 It is within the Court’s discretion to enter default judgment. *Eitel v. McCool*, 782 F.2d
4 1470, 1471 (9th Cir. 1986). “A default judgment must not differ in kind from, or exceed in
5 amount, what is demanded in the pleadings.” Fed. R. Civ. P. 54(c). To obtain default judgment, a
6 party must first receive an entry of default by the clerk. Fed. R. Civ. P. 55(a). A court may then
7 enter default judgment upon a party’s application. Fed. R. Civ. P. 55(b). Under the Local Rules,
8 the party seeking default judgment must note: (a) when and against what party the default was
9 entered; (b) the identification of the pleading to which default was entered; (c) whether the
10 defaulting party is an infant or incompetent person, and if so, whether that person is represented by
11 a general guardian, committee, conservator or other representative; (d) that the Servicemembers
12 Civil Relief Act does not apply; and (e) that notice has been served on the defaulting party if
13 required. C.D. Cal. L.R. 55-1.

14 Here, Plaintiff does not seek a judgment different in kind or amount from that demanded in
15 the pleadings. As explained above, defaults were entered against each of the Defendants prior to
16 the filing of this Motion. Additionally, Plaintiff attached to the Motion a declaration satisfying the
17 requirements of Local Rule 55-1. Plaintiff has satisfied the procedural requirements necessary for
18 the entry of default judgment.

19 The Ninth Circuit articulated the following factors for courts to consider in determining
20 whether default judgment should be granted: (1) the sufficiency of the complaint; (2) the merits of
21 the plaintiff’s substantive claim; (3) the possibility of prejudice to the plaintiff if relief is denied;
22 (4) the possibility of dispute as to any material facts; (5) whether default resulted from excusable
23 neglect; (6) the strong policy of the Federal Rules of Civil Procedure favoring decisions on the
24 merits; and (7) the amount of money at stake. *Eitel*, 782 F.2d at 1471-72. Here, the *Eitel* factors
25 weigh in favor of granting default judgment.

26 A plaintiff must state a claim upon which he may recover in order for a court to grant a
27 motion for a default judgment. *Sony Music Entertainment v. Elias*, 2004 WL 141959 (C.D. Cal.
28 Jan. 20, 2004); *Pepsico, Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1175 (C.D. Cal. 2002).

1 Upon default, the well-pleaded allegations of the complaint relating to liability are taken as true.
2 *TeleVideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). “On the other hand, a
3 defendant is not held to admit facts that are not well-pleaded or to admit conclusions of law.”
4 *Wecosign, Inc. v. IFG Holdings, Inc.*, 845 F. Supp. 2d 1072, 1078 (C.D. Cal. 2012).

5 The first two *Eitel* factors consider the sufficiency of the pleadings and the substantive
6 merits of the claim. The complaint is sufficient if it meets the pleading standards of *Iqbal* and
7 *Twombly*. Here, the Complaint seeks to reduce to judgment federal income tax assessments and to
8 foreclose federal tax liens that encumber the subject property. The government’s complaint
9 details the tax liabilities assessed against Berry and explains in detail that the liabilities have not
10 been paid despite notice and demand for payment. The Complaint was filed within the collection
11 period prescribed by 26 U.S.C. § 6502(a). According to the register of deeds, and as described in
12 the Complaint, Defendants San Bernardino County Treasurer-Tax Collector (San Bernardino
13 County), City of Rialto, and FTB recorded liens against the property, and First American holds a
14 deed of trust relating to the property. However, San Bernardino County is the only defendant that
15 has responded to the Complaint. The United States and San Bernardino County have entered into
16 a stipulation setting forth the order in which any sale proceeds from the property will be applied.
17 (Dkt. No. 18).

18 The United States’ authority to foreclose its tax liens and obtain an order of sale derives
19 from 26 U.S.C. § 7403. The well-pleaded facts in the Complaint, which are presumed true for
20 purposes of this Motion, establish Plaintiff’s statutory authority to foreclose its tax liens and obtain
21 an order of sale of the subject property. Accordingly, this Court is “authorized to order the forced
22 sale of [the] property to protect the federal government’s interest in prompt and certain collection
23 of delinquent taxes.” *In re Pletz*, 221 F.3d 1114, 1118 (9th Cir. 2000).

24 The remaining *Eitel* factors also favor default judgment. First, Plaintiff would suffer
25 prejudice if the Court were to deny default judgment because it would otherwise be without a
26 remedy for the harm caused by Berry’s failure to timely pay his tax liabilities. Second, there is
27 little possibility of dispute concerning material facts because, as explained, Plaintiff filed an
28 adequate Complaint establishing Berry’s unpaid tax liabilities. *See Wecosign, Inc. v. IFG*

1 *Holdings, Inc.*, 845 F. Supp. 2d 1072, 1082 (C.D. Cal. 2012) (“Where a plaintiff has filed a well-
2 pleaded complaint, the possibility of dispute concerning material facts is remote.”). Third,
3 Defendant has failed to respond and therefore admits all material facts alleged in the Complaint.
4 Because Plaintiff’s factual allegations are presumed true and Defendant has failed to respond, no
5 factual disputes exist that would preclude the entry of default judgment.

6 Regarding the next factor, Defendant has not argued that his failure to participate is due to
7 excusable neglect. Defendant had adequate notice of this matter—he was properly served with the
8 Summons and Complaint—yet failed to respond to the Complaint or otherwise make an
9 appearance. *See id.* (default judgment is favored when the defendant has been properly served).
10 While cases should be decided on their merits where possible, Defendant’s failure to meaningfully
11 participate makes a decision on the merits impractical. In this case, the potential prejudice to
12 Plaintiff in the absence of default judgment outweighs the policy favoring decisions on the merits.

13 The final *Eitel* factor “examines the amount of money at stake in relation to the seriousness
14 of a defendant’s conduct.” *Wecosign, Inc.*, 845 F. Supp. 2d at 1082. Here, the recovery the
15 United States seeks is directly proportional to the tax losses caused by Berry. Therefore, the final
16 *Eitel* factor favors entry of default judgment.

17 The same reasoning applies to enter default judgment against Defendants City of Rialto,
18 FTB, and First American. The only issues relating to these Defendants are whether they held an
19 interest in the property to be foreclosed and, if so, the relative priority of such interests. The
20 Complaint does not allege any harm caused by these Defendants or any liabilities owed by them to
21 Plaintiff. Defendants had ample opportunity to assert a claim to the property if they wished to do
22 so; however, they have not responded. Plaintiff would be substantially prejudiced if it is left
23 unable to obtain a remedy due to these Defendants’ failure to respond.

24 Having met the *Eitel* factors, Plaintiff is entitled to entry of default judgment against all
25 Defendants and specifically against Defendant Berry in the amount of \$348,406.25, which is the
26 remaining balance due on Berry’s unpaid income tax assessments as of January 30, 2019, plus all
27 statutory accruals, including interest, from January 30, 2019 until payment.

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1 **IT IS HEREBY ORDERED** that Plaintiffs' Motion for Default Judgment is GRANTED.
2 (Dkt. No. 12). Judgment is entered in favor of Plaintiff United States of America and against
3 Defendant Matthew C. Berry in the amount of \$348,406.25, plus all statutory accruals, including
4 interest, from January 30, 2019 until payment, plus costs. Statutory interest includes prejudgment
5 interest as set forth in Title 26 of the United States Code until the date of judgment and post-
6 judgment interest as set forth in 28 U.S.C. § 1961(c)(1) thereafter.

7 **IT IS FURTHER ORDERED** that the federal tax liens at issue in this case are foreclosed.
8 These liens attach to real property parcel number 0133-27-32-0000, City of Rialto, County of San
9 Bernardino, State of California (the property), legally described as: Lot 32 of Tract 11337, in the
10 City of Rialto, County of San Bernardino, State of California, as per map recorded in Book 164,
11 pages 9 and 10 of maps, the office of the County Recorder of said County. The property is
12 ordered to be sold as set forth below:

- 13 1. The Internal Revenue Service (IRS) Area Director of the district that includes San
14 Bernardino County, or his authorized delegate (such as an IRS Property Appraisal
15 and Liquidation Specialist (PALS)) is authorized to sell the property in accordance
16 with the provisions of 28 U.S.C. §§ 2001 and 2002.
- 17 2. Any party to this proceeding or any person claiming an interest in the property may
18 request that the Court order a private sale of the property pursuant to 28 U.S.C. §
19 2001(b). Any such motion shall be filed within 21 days after entry of this
20 Judgment and shall set forth with particularity (a) the nature of the moving party's
21 interest in the property, (b) the reasons why the moving party believes that a private
22 sale would be in the best interests of the United States of America and any other
23 claimant involved herein, (c) the names of three proposed appraisers and a short
24 statement of their qualifications, and (d) a proposed order stating the terms and
25 conditions of the private sale. Any such motion shall comply with the Local Rules,
26 including Local Rule 7.
- 27 3. If no motion is filed pursuant to the preceding paragraph, the IRS Area Director or
28 PALS is ordered to sell the property. The sale of the property shall comply with

1 the provisions of 28 U.S.C. §§ 2001(a) and 2002. The property shall be sold at a
2 public sale to be held at the San Bernardino County Courthouse as follows:

- 3 a. The PALS shall announce the date and time of the sale.
- 4 b. Notice of the sale shall be published once a week for at least four
5 consecutive weeks prior to the sale in at least one newspaper regularly
6 issued and of general circulation in San Bernardino County, California. The
7 notice shall describe the property by its street address and legal description
8 and shall contain the terms and conditions of sale as set out herein.
- 9 c. The terms and conditions of the sale shall be as follows:
- 10 i. A minimum bid determined by reference to the current fair market
11 value of the property shall be required. The minimum bid shall be
12 75% of the current fair market value as determined by an appraisal
13 of the subject property by the PALS. All payments relating to the
14 property shall be made by money order or by certified or cashier's
15 check.
- 16 ii. The PALS shall set the minimum bid. If the minimum bid is not
17 met or exceeded, the PALS may, without further permission of this
18 Court, and under the terms and conditions in this order of sale, hold
19 a new public sale, if necessary, and reduce the minimum bid.
- 20 iii. At the time of the sale, the successful bidder shall be required to
21 deposit with the PALS, by money order or by certified or cashier's
22 check payable to the United States District Court for the Central
23 District of California, a deposit equal to twenty percent (20%) of the
24 bidder's total bid immediately upon the property being struck off
25 and awarded to such bidder as the highest and best bidder.
- 26 iv. Within three (3) business days of the date of sale, the successful
27 bidder shall remit the remaining eighty percent (80%) of her total
28 bid by money order or by certified or cashier's check payable to the

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- United States District Court for the Central District of California.
- v. The money order or certified or cashier’s check payable to the United States District Court for the Central District of California shall be given by the successful bidder to the PALS, who will deposit the funds with the Clerk of this Court.
 - vi. vi. Should the successful bidder fail to comply with the terms of the sale, such bidder shall be liable to the United States for twenty percent (20%) of his bid on the property as a penalty. The Clerk shall distribute the 20% penalty as directed by the PALS by check made to the “United States Treasury” to be applied toward payment of said penalty. Payment of said penalty shall not be a credit on the judgment of the United States. The subject property shall again be offered for sale under the terms and conditions of this order for sale or, in the alternative, sold to the second highest bidder.
 - d. The Clerk of the District Court is directed to accept the proceeds of the sale and deposit it into the Court’s registry for distribution pursuant to further direction from the Court.
 - e. Upon selling the subject property, the United States of America shall prepare and file with this Court an application to confirm sale and direct distribution of the sale proceeds, which will set forth an accounting and report of the sale of the subject property. The sale of the subject property shall be subject to confirmation by this Court.
 - f. The application to confirm sale and direct distribution of sale proceeds shall be filed within thirty (30) days from the date of such sale. If no objections have been filed in writing in this cause with the Clerk of the Court within fifteen (15) days of the date of sale, the sale shall be confirmed by the Court without necessity of motion. Upon confirmation of the sale, the Court will direct the IRS to execute and deliver its deed conveying the subject property

1 to the purchaser. Upon confirmation of the sale, all interests in, liens
2 against, or claims to the subject property that are held or asserted by all
3 parties to this action will be discharged and extinguished.

4 4. Possession of the property sold shall be yielded to the purchaser upon the
5 production of the certificate of sale and deed; and if there is a refusal to so yield, a
6 writ of assistance may, without further notice, be issued by the Clerk of this Court
7 to compel delivery of the property sold to the purchaser.

8 5. Until possession of the subject property is yielded to the purchaser of the property,
9 Berry shall:

- 10 a. Take all reasonable steps necessary to preserve the subject property
11 (including all buildings, improvements, fixtures, and appurtenances on the
12 property) in its current condition, including maintaining a fire-and-casualty
13 insurance policy on the subject property;
- 14 b. Timely pay all real property taxes, mortgage payments, homeowners
15 association dues (if any), and insurance premiums;
- 16 c. Neither commit waste against the property nor allow or cause anyone else
17 to do so; and
- 18 d. Neither do anything that tends to reduce the value or marketability of the
19 property nor allow or cause anyone else to do so.

20 6. After the Court confirms the sale, and by Order on the application made by the
21 United States of America as to the specific amounts at issue, the sale proceeds
22 deposited with the Clerk of this Court shall be applied to the following items in the
23 order specified:

- 24 a. First, to the United States for the costs of the sale;
- 25 b. Second, to the San Bernardino County Tax Collector for any outstanding
26 real property taxes, special assessments, or charges for utilities or public
27 services, relating to the property;
- 28 c. Third, to the United States for the following federal tax liens:

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- i. 2009-0142354 (filed 04/03/2009)
 - ii. 2009-0269693 (filed 06/22/2009)
 - d. Fourth, to the United States for its restitution lien filed September 10, 2009, instrument number 2009-0399514;
 - e. Fifth, to the United States for its federal tax lien filed June 13, 2012, instrument number 2012-0238802.
 - f. The remainder of the sale proceeds (if any) shall be paid to Berry.
7. Any sale by the Area Director pursuant to this judgment shall be free and clear of any liens and encumbrances held by any party to this action including the State of California Franchise Tax Board, the City of Rialto, and First American Title Company.
8. Default judgments are entered against defendants State of California, through its agency, the Franchise Tax Board, City of Rialto, and First American Title Company, and these judgments extinguish any claims they may have had on the property.
9. The Court hereby retains jurisdiction of this action for the purpose of making proper distributions of the proceeds of the sale and resolving any disputes concerning the application to confirm sale and direct distribution of sale proceeds.

Dated: May 13, 2019.



MANUEL L. REAL
UNITED STATES DISTRICT JUDGE