

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3
4 ESURANCE PROPERTY AND CASUALTY
5 INSURANCE COMPANY,

6 Plaintiff,

7 vs.

8 JOSHUA REED *et al.*,

9 Defendants.

Case No.: 2:25-cv-00698-GMN-DJA

ORDER GRANTING MOTION FOR
DEFAULT JUDGMENT

10 Pending before the Court is the Motion for Default Judgment, (ECF No. 12), filed by
11 Plaintiff Esurance Property and Casualty Insurance Company (“Esurance”). Defendants Joshua
12 Reed and Nasir Warfield did not appear in this action or file a Response. For the reasons
13 discussed below, the Court GRANTS Plaintiff’s Motion for Default Judgment.

14 **I. BACKGROUND**

15 Plaintiff Esurance is a California-based insurance company that issued a policy (“the
16 Policy”) on behalf of Defendant Reed, a citizen of Nevada. (Compl. ¶ 1, ECF No. 1). The
17 Policy provided Reed with bodily injury liability insurance with a limit of \$25,000 per person.
18 (*Id.* ¶ 11); (*see also* Policy at 3, ECF No. 12-1).

19 On October 8, 2022, Reed permitted Defendant Warfield, also a citizen of Nevada, to
20 operate Reed’s vehicle. (Compl. ¶ 9). That day, Warfield was involved in a motor vehicle
21 accident in which he rear-ended a vehicle operated by Makenzie Wadkins. (*Id.*). Warfield fled
22 the scene and was later arrested for driving under the influence. (*Id.*). Plaintiff was notified of
23 the loss four days later, at which point it opened a claim. (*Id.* ¶ 12).

24 On November 29, 2022, Wadkins’ attorney sent Plaintiff a “time limited demand” with a
25 December 19 deadline to accept. (*Id.* ¶ 13). Plaintiff did not respond by the deadline,

1 prompting Wadkins' attorney to send Plaintiff a second letter on February 13, 2023. (*Id.* ¶ 14).
2 Plaintiff responded to the second letter nine days later, offering Wadkins the full \$25,000
3 liability limit set by the Policy. (*Id.* ¶ 15). Plaintiff alleges that the two-month delay in
4 responding to the first letter was "the result of unintentional inadvertence and mistake." (*Id.* ¶
5 14). Nevertheless, Wadkins rejected Plaintiff's offer and asserted that the Policy is "opened"
6 because of Plaintiff's delayed response. (*Id.* ¶ 16); (*see also* Wadkins Letter, ECF No. 12-4).

7 On May 18, 2023, Wadkins filed a lawsuit against Defendants in the Eighth Judicial
8 District Court, County of Clark, Nevada, asserting claims for negligence against Defendants
9 Warfield and Reed and seeking compensatory and punitive damages. (State Compl. ¶¶ 40–83,
10 ECF No. 12-2).

11 On April 21, 2025, Plaintiff commenced this action by filing its Complaint against
12 Defendants which seeks relief in the form of declaratory judgment. (Compl. ¶¶ 22–26, ECF No.
13 1). Specifically, Plaintiff asks the Court to declare that (1) it is not obligated to provide bodily
14 injury liability benefits beyond the \$25,000 limit set by the Policy, (2) it is not liable for any
15 punitive damages as a result of Warfield's conduct, and (3) it is not liable for any
16 extracontractual claims as a result of its conduct in the adjustment of the claim and defense of
17 the underlying suit, including claims for breach of implied covenant of good faith and fair
18 dealing or any violation of Nevada's Unfair Claims Practices Act, Nev. Rev. Stat. 686A.310.
19 (*Id.*).

20 Defendants failed to answer or otherwise appear in this case. Plaintiff moved for entry
21 of default, and the Clerk entered default on November 11, 2025, pursuant to Rule 55(a) of the
22 Federal Rules of Civil Procedure. (Mot. Entry Default, ECF No. 10); (Entry of Default, ECF
23 No. 11). Plaintiff now moves for default judgment under Federal Rule of Civil Procedure
24 55(b). (Mot. Default J., ECF No. 12).

1 **II. LEGAL STANDARD**

2 Obtaining default judgment is a two-step process governed by Rule 55 of the Federal
3 Rules of Civil Procedure (“FRCP”). *See Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986).
4 First, the moving party must seek an entry of default from the clerk of court. Fed. R. Civ. P.
5 55(a). Entry of default is only appropriate when a party “has failed to plead or otherwise
6 defend.” *Id.* After the clerk enters the default, a party must then separately seek entry of default
7 judgment from the court in accordance with FRCP 55(b). Fed. R. Civ. P. 55(b). Upon entry of
8 a clerk’s default, the court takes the factual allegations in the complaint as true, except those
9 relating to the amount of damages. *See TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917–
10 18 (9th Cir. 1987) (per curiam).

11 **III. DISCUSSION**

12 As an initial matter, Plaintiff has satisfied the first step of the two-step process for
13 obtaining default judgment. Pursuant to FRCP 55(a), the Clerk of the Court correctly entered
14 default against Defendants because they have not appeared in this case. (*See* Entry of Default).
15 The Court first determines whether it has jurisdiction over this case before turning to the *Eitel*
16 factors.

17 **A. Jurisdiction**

18 “When entry of judgment is sought against a party who has failed to plead or otherwise
19 defend, a district court has an affirmative duty to look into its jurisdiction over both the subject
20 matter and the parties.” *In re Tuli*, 172 F.3d 707, 712 (9th Cir. 1999). This action meets
21 diversity jurisdiction requirements because the parties are diverse, (Compl. ¶ 1–3, 5), and
22 Plaintiff’s declaratory relief claims arise from its potential liability to a third party, Wadkins,
23 whose state court lawsuit alleges injury and medical costs of \$75,000 in addition to as-yet-
24 undetermined property damages and punitive damages. (Compl. ¶ 5); (State Compl. 13:4–22);
25 (*see also* Claim Log, ECF No. 1-1 (claiming medical special damages in excess of \$110,000)).

1 Further, this Court has personal jurisdiction over Defendants because the incident giving rise to
2 the cause of action—the October 2022 motor vehicle accident—occurred in Las Vegas,
3 Nevada. (Compl. ¶ 9, ECF No. 1).

4 However, satisfying statutory jurisdictional requirements does not end the inquiry.
5 Because Plaintiff here brings a declaratory judgment action, the Court must determine, in its
6 discretion, whether to exercise jurisdiction. *See Gov’t Emp. Ins. Co. v. Dizol*, 133 F.3d 1220,
7 1222–23 (9th Cir. 1998). Further, because Plaintiff seeks a default judgment, the Court must
8 examine the adequacy of service of process. *Bank of West v. RMA Lumber Inc.*, No. C 07-
9 06469 JSW, 2008 WL 2474650, at *2 (N.D. Cal. June 17, 2008). The Court addresses each in
10 turn.

11 **1. Brillhart Factors**

12 Under the Declaratory Judgment Act, the Court has discretion to decide to issue a
13 declaratory judgment on “the rights and other legal relations of any interested party seeking
14 such declaration.” 28 U.S.C. § 2201(a). When determining whether to exercise jurisdiction, the
15 Court must consider three factors: “(1) avoidance of needless determination of state law issues;
16 (2) discouragement of the use of declaratory actions as a means of forum shopping; and (3)
17 avoidance of duplicative litigation.” *Allstate Fire & Cas. Ins. Co. v. Diamond*, No. 2:14-cv-
18 1044, 2015 WL 265422, at *2 (D. Nev. Jan 21, 2015) (citing *Brillhart v. Excess Ins. Co. of*
19 *Am.*, 316 U.S. 491, 494 (1942)). Federal courts should “decline to assert jurisdiction” in
20 “declaratory relief actions presenting only issues of state law during the pendency of parallel
21 proceedings in state court unless there are circumstances present to warrant an exception to that
22 rule.” *Emp’rs. Reinsurance Corp. v. Karussos*, 65 F.3d 796, 798 (9th Cir. 1995) (internal
23 quotations omitted), *overruled in part on other grounds*, *Gov’t Emps. Ins. Co. v. Dizol*, 133
24 F.3d 1220 (9th Cir. 1998). Since Plaintiff’s suit in this Court is related to an ongoing suit in
25

1 state court (to which Plaintiff is not a party), the Court will address the application of the
2 *Brillhart* factors.

3 The first *Brillhart* factor—discouraging needless litigation of state-law issues—does not
4 weigh against exercising jurisdiction. Plaintiff seeks a declaration stating that it adhered to
5 Nevada law when carrying out its obligations under the Policy. (See Compl. ¶¶ 22–26). It
6 raises questions of state law with respect to both the implied covenant of good faith and fair
7 dealing and interpretation of insurance contracts under Nevada law. See *Allstate Fire*, 2015 WL
8 265422, at *2 (D. Nev. Jan. 21, 2015); *Cincinnati Specialty Underwriters Ins. Co. v. Red Rock*
9 *Hounds*, 511 F. Supp. 3d 1105, 1111 (D. Nev. 2021). However, the impetus of *Brillhart* was to
10 prevent “uneconomical” and “vexatious” federal suits where a state court case “present[ed] the
11 same issues . . . between the same parties.” *Brillhart*, 316 U.S. at 495. Here, Plaintiff is not a
12 party to the related state action, (Compl. ¶ 10), and Wadkins’ suit against Defendants does not
13 address the “same issues.” The related state action involves a tort claim between Wadkins and
14 Defendants, while the present action is a contract claim between Plaintiff and insured
15 Defendants. See *Red Rock Hounds*, 511 F. Supp. 3d at 1111 (noting that related state court
16 action did not involve the same issues as the federal action because the former involved a tort
17 claim while the latter involved a contract claim). Consequently, although the Court “recognizes
18 that it may need to determine the rights of the parties under Nevada law, the concerns expressed
19 by the first *Brillhart* factor are not implicated here.” *Id.*

20 The second *Brillhart* factor—discouraging forum shopping—is neutral in this case.
21 Although Plaintiff could perhaps have filed the same case in state court in Nevada, there is no
22 evidence in the record that it chose to file in federal court “as a means of forum shopping.” See
23 *Allstate Fire*, 2015 WL 265422, at *2.

24 The third *Brillhart* factor—avoiding duplicative litigation—is, like the second factor,
25 ultimately neutral. Determining whether Plaintiff must indemnify Defendants in the underlying

1 state court litigation would not involve a finding that Defendants acted negligently in the motor
2 vehicle accident with Wadkins. *See Red Rock Hounds*, 511 F. Supp. 3d. at 1112. Plaintiff
3 raises issues of insurance contract interpretation and good-faith dealings, which are “dissimilar”
4 from Wadkins’ ongoing negligence claim in state court. *Id.*

5 Because the *Brillhart* factors do not weigh in favor of abstention, the Court will exercise
6 jurisdiction over Plaintiff’s declaratory judgment action.

7 **2. Service**

8 “A federal court does not have jurisdiction over a defendant unless the defendant has
9 been served properly under [FRCP 4].” *Direct Mail Specialists, Inc. v. Eclat Computerized*
10 *Techs., Inc.*, 840 F.2d 685, 688 (9th Cir. 1988).

11 Here, Plaintiff has filed affidavits from its process servers, stating that they attempted
12 service on Defendants on many occasions and in various manners. For Defendant Warfield,
13 Plaintiff’s process server visited his last known address on two occasions, contacted his leasing
14 office and was informed that he had moved, and contacted his probation officer, who said that
15 Warfield had absconded. (Warfield Aff. Non-Serv. ¶¶ 4–7, ECF No. 5-6). For Defendant Reed,
16 Plaintiff’s process server visited his last known address on three occasions (and was informed
17 at the third visit that Reed did not live there), called five phone numbers associated with Reed,
18 and attempted to contact him via social media. (Reed Aff. Non-Serv. ¶¶ 4–7, ECF No. 5-7). In
19 addition, Plaintiff claims that it undertook extensive attempts to reach both Defendants with
20 regard to Wadkins’ insurance claim and eventually the underlying state court litigation, several
21 years before the commencement of the present action. (Mot. Leave Serve by Pub. 5:6–18, ECF
22 No. 5). As evidence, Plaintiff submitted records of letters and emails sent to Defendants, an
23 investigative report that tracked Defendants’ location and contact information across several
24 states, and affidavits of non-service from the process servers. (Letters from Plaintiff to
25

1 Defendants, ECF No. 5-2); (Aff. Due Diligence, ECF No. 5-3); (Investigative Report, ECF No.
2 5-5).

3 In June 2025, Plaintiff filed a Motion for Leave to Serve by Publication, (ECF No. 5).
4 Because Defendants were unresponsive and could not be reached by Plaintiff or Plaintiff's
5 process servers at any point since the underlying car accident, Magistrate Judge Daniel J.
6 Albregts granted Plaintiff's motion and ordered Plaintiff to publish its summons in the Nevada
7 Legal News at least once per week for a period of four weeks, in accordance with NRCP
8 4.4(c)(4)(A). (Order Granting Mot. Leave Serve by Pub. 4:9–13, ECF No. 7). Plaintiff was
9 also required to mail a copy of the summons, complaint, and court order to each Defendant's
10 last-known address, in accordance with NRCP 4.4(c)(4)(B). (*Id.*).

11 On October 20, 2025, Plaintiff filed an affidavit from the Publisher of the Nevada Legal
12 News stating that the summons for both Defendants were published on September 23,
13 September 30, October 4, and October 14. (Aff. Pub., ECF No. 8). Plaintiff's attorney also
14 filed a Certificate of Mailing on October 20, certifying that the summons, Complaint, and Judge
15 Albregts's Order were mailed to each Defendant's last-known address. (Cert. Mailing, ECF No.
16 9). Plaintiff therefore complied with NRCP 4.4(c) and the Judge Albregts's Order. Thus,
17 service was completed "in substantial compliance with [FRCP] 4," giving this Court
18 jurisdiction over Defendants. *Crowley v. Bannister*, 734 F.3d 967, 975 (9th Cir. 2013).

19 **B. *Eitel* Factors**

20 In determining whether to grant default judgment, courts are guided by the following
21 seven factors: (1) the possibility of prejudice to the plaintiff; (2) the merits of the plaintiff's
22 substantive claims; (3) the sufficiency of the complaint; (4) the sum of money at stake in the
23 action; (5) the possibility of a dispute concerning material facts; (6) whether the default was
24 due to excusable neglect; and (7) the strong public policy favoring decisions on the merits.
25 *Eitel*, 782 F.2d at 1471–72. The Court will address each factor in turn.

1 **1. Possibility of Prejudice to the Plaintiff**

2 A defendant's failure to respond or otherwise appear in a case "prejudices a plaintiff's
3 ability to pursue its claims on the merits." *See, e.g., Nationstar Mortg. LLC v. Operture, Inc.*,
4 No: 2:17-cv-03056, 2019 WL 1027990, at *2 (D. Nev. Mar. 4, 2019); *see also PepsiCo, Inc. v.*
5 *Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002) ("If Plaintiffs' motion for default
6 judgment is not granted, Plaintiffs will likely be without other recourse for recovery.").

7 The first *Eitel* factor weighs in favor of granting Plaintiff's motion because it will
8 otherwise be denied recourse for a final determination of its policy obligations. *See Liberty Ins.*
9 *Underwriters Inc. v. Scudier*, 53 F. Supp. 3d 1308, 1318 (D. Nev. 2013). Plaintiff filed this
10 action in order to determine its rights or duties with regard to the claims asserted against it.
11 Without the entry of default judgment, Plaintiff could be asked to defend or indemnify
12 Defendants against the claims filed in the underlying suit in excess of the \$25,000 limit set by
13 the Policy or could be liable for punitive damages in the underlying state court litigation.
14 Plaintiff has no other means to secure a declaration of its rights and obligations towards
15 Defendants or towards Wadkins. Thus, the Court finds this potential prejudice weighs in favor
16 of granting a default judgment. *See Scudier*, 53 F. Supp. 3d at 1318; *see also Progressive*
17 *Universal Ins. Co. v. Minica*, No. 2:22-CV-01573, 2023 WL 5435976, at *3 (D. Or. July 18,
18 2023), *report and recommendation adopted*, 2023 WL 5432527 (D. Or. Aug. 23, 2023).

19 **2. Plaintiff's Substantive Claims and the Sufficiency of the Complaint**

20 The second and third factors focus on the merits of Plaintiff's substantive claims and the
21 sufficiency of the complaint. *See Eitel*, 782 F.2d at 1471. These factors, often analyzed
22 together, require courts to determine whether a plaintiff has "state[d] a claim on which [it] may
23 recover." *PepsiCo*, 238 F. Supp. 2d at 1175. Courts often consider these factors "the most
24 important." *Vietnam Reform Party v. Viet Tan – Vietnam Reform Party*, 416 F. Supp. 3d 948,
25 962 (N.D. Cal. 2019). If a district court has "serious reservations" about the merits of a

1 plaintiff's claims based on the pleadings, these factors weigh in favor of denying default
2 judgment. *See Eitel*, 782 F.2d at 1472. "A claim has facial plausibility when the plaintiff
3 pleads factual content that allows the court to draw the reasonable inference that the defendant
4 is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell*
5 *Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007)). "Where the allegations in a complaint are
6 not 'well-pleaded,' liability is not established by virtue of the defendant's default and default
7 judgment should not be entered." *See Adobe Sys., Inc. v. Tilley*, No. 3:09-cv-1085, 2010 WL
8 309249, at *3 (N.D. Cal. Jan. 19, 2010). "[C]laims which are legally insufficient are not
9 established by default." *Cripps v. Life Ins. Co. of N. Am.*, 980 F.2d 1261, 1267 (9th Cir. 1992).

10 Upon default, "the factual allegations of the complaint, except those relating to the
11 amount of damages, will be taken as true." *Geddes v. United Fin. Grp.*, 559 F.2d 557, 560 (9th
12 Cir. 1997). Although Plaintiff attached the Policy as an exhibit to its Motion for Default
13 Judgment, (ECF No. 12-2), rather than to the Complaint, the Policy is integral to the complaint.
14 The Complaint "necessarily relies upon" it, its "authenticity is not in question," and "there are
15 no disputed issues as to [its] relevance." *Coto Settlement v. Eisenberg*, 593 F.3d 1031 (9th Cir.
16 2010); *see also Ecological Rts. Found. v. Pac. Gas & Elec. Co.*, 713 F.3d 502, 511 (9th Cir.
17 2013). Thus, the Court finds that the contents of the Policy may be considered in the present
18 motion. *See also Great Am. Ins. Co. v. Revolutionary Prods. Inc.*, No. 24-cv-1001, 2025 WL
19 2437530, at *8 (E.D. Cal. Aug. 25, 2025) (incorporating by reference a document "not
20 physically attached to the complaint" in a motion for default judgment), *report and*
21 *recommendation adopted*, 2025 WL 2778363 (E.D. Cal. Sept. 30, 2025); *Bernardo v. Davis*
22 *Davis & Assocs. LLC*, No. 5:21-cv-2010, 2022 WL 2101910, at *3 n.2 (C.D. Cal. Mar. 31,
23 2022) (same).

24 Plaintiff presents three separate claims related to its rights and obligations towards
25 Defendants. The Court will address each in turn. Because the question of whether Plaintiff

1 acted in good or bad faith is relevant to the questions of indemnity and punitive damages, the
2 Court will address it first.

3 **a. Covenant of Good Faith and Fair Dealing**

4 Plaintiff first seeks a determination that “it did not breach the covenant of good faith and
5 fair dealing” or violate the Nevada Unfair Claims Practices Act, Nev. Rev. Stat. (“NRS”)
6 686A.310. (Compl. ¶ 26).

7 “Bad faith is established where the insurer acts unreasonably and with knowledge that
8 there is no reasonable basis for its conduct,” such as the “unreasonable denial or delay in
9 payment of a valid claim.” *Guar. Nat’l Ins. Co. v. Potter*, 912 P.2d 267, 272 (Nev. 1996).
10 “Poor judgment or negligence on the part of an insurer does not amount to bad faith.” *USF Ins.*
11 *Co. v. Smith’s Food & Drug Ctr., Inc.*, 921 F. Supp. 2d 1082, 1093 (D. Nev. 2013), *as*
12 *corrected* (Mar. 27, 2013). A similar principle is embodied in NRS 686A.310, under which
13 “[f]ailing to acknowledge and act reasonably promptly upon communications with respect to
14 claims arising under insurance policies” is “considered to be an unfair practice” that could open
15 an insurer to liability “for any damages sustained by the insured as a result.” NRS
16 686A.310(1)(b), (2).

17 Plaintiff plausibly alleges that the twelve-week lapse between receiving Wadkins’ first
18 letter and making its eventual settlement offer was caused by “unintentional inadvertence and
19 mistake due to a change in staff assignment within the claims department.” (Compl. ¶ 14).
20 Plaintiff’s allegations, taken as true, establish that at worst, it acted with “poor judgment or
21 negligence,” *USF Ins. Co.*, 921 F. Supp. 2d at 1093. Thus, Plaintiff has plausibly alleged that it
22 did not act in bad faith—and did not breach the implied covenant of good faith and fair
23 dealing—in its negotiations with Wadkins. The second and third *Eitel* factors therefore weigh
24 in favor of default judgment for Plaintiff regarding its compliance with the covenant of good
25 faith and fair dealing and NRS 686A.310.

1 **b. Indemnity Above Policy Limits**

2 Plaintiff next claims that it is not obligated to pay bodily injury liability limits to
3 Wadkins beyond the \$25,000 limit set by the Policy. (Compl. ¶ 23).

4 The Complaint states a plausible claim that coverage under the Policy for the claims
5 Wadkins alleges against Defendants is set at a maximum of \$25,000. (*Id.* ¶ 11). The Policy
6 lists the “bodily injury” liability coverage of “25,000/person” and explains that this is
7 Plaintiff’s “maximum limit of liability for all damages.” (Policy at 3, 13–14).

8 While insurance policy limits can be set aside if the insurer acted in bad faith during the
9 settlement process, Plaintiff, as discussed above, has plausibly alleged that it acted in good faith
10 throughout its communications with Wadkins. *See, e.g., Jimenez v. GEICO Secure Ins. Co.*,
11 730 F. Supp. 3d 1091, 1095 (D. Nev. 2024). The second and third *Eitel* factors therefore weigh
12 in favor of default judgment for the Plaintiff with respect to its obligation to indemnify
13 Defendants above the \$25,000 contractual limit.

14 **c. Obligation to Pay Punitive Damages**

15 Finally, Plaintiff claims that it is not obligated to pay any punitive damages that may be
16 awarded against Defendants in the underlying state court litigation. (Compl. ¶ 26).

17 The Complaint states a plausible claim that Defendant Reed’s coverage does not extend
18 to punitive damages, alleging that the latter “are specifically excluded from coverage under the
19 [Policy].” (*Id.* ¶ 21). The Policy states that Plaintiff “will not pay for punitive or exemplary
20 damages” as part of its liability coverage. (Policy at 3).

21 While Plaintiff delayed in responding to the first letter from Wadkins’ counsel, the delay
22 does not oblige Plaintiff to pay punitive damages specifically excluded the Policy. As
23 discussed above, Plaintiff has plausibly alleged that it did not act in bad faith in responding to
24 Wadkins. In addition, Nevada law “clearly prohibits, on grounds of public policy,
25 indemnification for punitive damages.” *Lombardi v. Md. Cas. Co.*, 894 F. Supp. 369, 372 (D.

1 Nev. 1995) (first citing *Siggelkow v. Phoenix Ins. Co.*, 846 P.2d 303 (Nev. 1993); and then
2 citing *N.H. Ins. Co. v. Gruhn*, 670 P.2d 941 (Nev. 1983)). The second and third *Eitel* factors
3 therefore weigh in favor of default judgment for the Plaintiff with respect to its obligation to
4 pay punitive damages in the underlying state court litigation.

5 **3. Sum of Money at Stake in the Action**

6 The fourth *Eitel* factor addresses the damages at stake in the action. *See Eitel*, 782 F.2d
7 at 1471. The Court considers “the amount of money requested in relation to the seriousness of
8 the defendant’s conduct, whether large sums of money are involved, and whether ‘the recovery
9 sought is proportional to the harm caused by [the] defendant’s conduct.’” *Next Gaming, LLC v.*
10 *Glob. Gaming Grp., Inc.*, No. 2:14-cv-00071, 2016 WL 3750651, at *3 (D. Nev. July 13, 2016)
11 (quoting *Landstar Ranger, Inc. v. Parth Enters., Inc.*, 725 F. Supp. 2d 916, 921 (C.D. Cal.
12 2010)).

13 Here, Plaintiff seeks only declaratory relief concerning its obligations to Defendants.
14 (Compl. ¶¶ 22–26). Because there is no money directly at stake in this litigation, the court
15 finds that this factor weighs in favor of granting default judgment. *See PepsiCo*, 238 F. Supp.
16 2d at 1177; *Scudier*, 53 F. Supp. 3d at 1318.

17 **4. Possibility of a Dispute Concerning Material Facts**

18 The fifth *Eitel* factor evaluates the possibility of dispute as to any material facts in the
19 case. *PepsiCo*, 238 F. Supp. 2d at 1177. Once the Clerk of Court enters default, all well-
20 pleaded facts in complaint, except those relating to damages, are taken as true. *Id.* Here,
21 Plaintiff filed a well-pleaded Complaint alleging the facts necessary to establish its claims, and
22 the Clerk entered default against Defendants. (Entry of Default, ECF No. 11). Thus, no dispute
23 has been raised regarding the material averments of the complaint, and the likelihood that any
24 genuine issue may exist is not high. This factor therefore favors the entry of default.
25

5. Excusable Neglect

The sixth factor considers whether Defendants' defaults are due to excusable neglect. *Id.* If a defendant is "properly served with the Complaint, the notice of entry of default, as well as the papers in support of the instant motion," the default "cannot be attributed to excusable neglect." *Shanghai Automation Instrument Co. v. Kuei*, 194 F. Supp. 2d 995, 1005 (N.D. Cal. 2001).

As previously discussed, Plaintiff was unable to reach either Defendant for service of the Complaint and ultimately obtained an Order granting permission to serve Defendants by publication. Defendants have failed to respond to Plaintiff's communications ever since the October 2022 car accident at issue in the underlying litigation, over two years before the present action was initiated in this Court. There is no evidence before the Court that suggests Defendants' failure to respond was due to excusable neglect. Rather, Defendants' failure to respond to the Complaint in this case is consistent with their behavior since the accident that formed the basis of the underlying litigation. This factor therefore weighs in favor of default judgment.

6. Policy for Deciding on the Merits

The final factor weighs against default judgment. As the Ninth Circuit explained in *Eitel*, "default judgments are ordinarily disfavored." 782 F.2d at 1472. "Cases should be decided upon their merits whenever reasonably possible." *Id.* But the existence of FRCP 55(b) "indicates that this preference, standing alone, is not dispositive." *PepsiCo*, 238 F. Supp. 2d at 1177 (internal quotations omitted). Defendants' failure to answer or otherwise respond to the complaint "makes a decision on the merits impractical, if not impossible." *See id.*

Evaluating the *Eitel* factors as applied to this case, the Court finds that the majority of the factors support the entry of default judgment and concludes that the entry of default judgment against Defendants is appropriate.

1 **C. Relief Requested**

2 A default judgment cannot differ “in kind from, or exceed in amount, what is demanded
3 in the pleadings.” Fed. R. Civ. P. 54(b). Here, Plaintiff’s claim for relief is the entry of a
4 declaratory judgment that (1) it is not obligated to pay bodily injury liability limits beyond the
5 \$25,000.00 limits provided in the Policy; (2) it is not obligated to pay any punitive damages
6 that may be awarded against Defendants in the underlying state suit filed against them by
7 Wadkins; and (3) it is not liable for any extracontractual claims as a result of its conduct in the
8 adjustment of the claim and defense of the underlying suit, including claims for breach of the
9 implied covenant of good faith and fair dealing or any violation of Nevada’s Unfair Claims
10 Practices Act. (Compl. ¶¶ 22–26).

11 As discussed above, Plaintiff’s well-pled allegations, when taken as true, show that it is
12 entitled to such relief.

13 **IV. CONCLUSION**

14 **IT IS HEREBY ORDERED** that Plaintiff’s Motion for Default Judgment, (ECF No.
15 12), is **GRANTED**. The Court finds that Plaintiff does not have a duty to defend or indemnify
16 Defendants beyond the \$25,000 limit set by Defendant Reed’s insurance policy. The Court
17 further finds that Plaintiff does not have a duty to pay any punitive damages awarded against
18 Defendants in the underlying state court litigation. Finally, the Court finds that Plaintiff is not
19 liable for any extracontractual claims arising from its conduct in the adjustment of the claim
20 and defense of the underlying suit, including claims for breach of implied covenant of good

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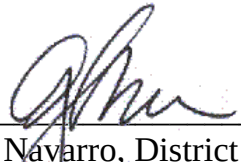
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1 faith and fair dealing or any violation of Nevada's Unfair Claims Practices Act.

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4 **DATED** this 28 day of August, 2026.

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9 Gloria M. Navarro, District Judge
10 UNITED STATES DISTRICT COURT
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