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7 WILLIAMS SPORTS RENTALS, INC. ("WSR")

8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 IN ADMIRALTY

11	IN RE: COMPLAINT AND PETITION OF	) Case No. 2:17-cv-00653-KJM-JDP
12	WILLIAMS SPORTS RENTALS, INC. AS)
13	OWNER OF A CERTAIN 2004 YAMAHA	) Hon. Kimberly J. Mueller
14	WAVERUNNER FX 140 FOR	) Chief United States District Judge
15	EXONERATION FROM OR LIMITATION)
16	OF LIABILITY	) STIPULATION FOR ORDER SETTING
17		) ASIDE DEFAULTS AGAINST THIRD-
18		) PARTY DEFENDANTS THOMAS SMITH
19		) AND BERKELEY EXECUTIVES, INC.,
20	MARIAN LATASHA WILLIS, on behalf of the	) ACKNOWLEDGING SERVICE WITH
21	Estate of RAESHON WILLIAMS,	) DEADLINE TO ANSWER ON OR BEFORE
22	<i>Respondent/Counter Claimant,</i>	) NOV. 17, 2023
23	v.	) [FRCP 55(c)]
24	WILLIAMS SPORTS RENTALS, INC.,)
25	<i>Petitioner/Counter Defendant.</i>)
26)
27	WILLIAMS SPORTS RENTALS, INC.,)
28	<i>Petitioner, Counter Defendant, and</i>)
	<i>Third-party Plaintiff,</i>)
	v.)
	THOMAS SMITH, KAI PETRICH,)
	BERKELEY EXECUTIVES, INC.,)
	ZIP, INC., and DOES 1-10,)
	<i>Third-party Defendants.</i>)
)
	AND RELATED ACTIONS)
)

1 WHEREAS, Petitioner Williams Sports Rentals (WSR) commenced these admiralty
2 proceedings under the Limitation of Liability Act (LOLA) 46 U.S.C. § 30529(c), and Admiralty
3 Rule F(3) on March 28, 2017 (Complaint, ECF No. 1);

4 WHEREAS, Petitioner and Third-Party Plaintiff WSR filed a Third-Party Complaint (TPC)
5 (ECF No. 92), including its Exhibit A (Smith's Rental Agreement with WSR) (ECF No. 92-1),
6 Exhibit B (Smith's Release and Waiver Form with WSR) (ECF No. 92-2), and Exhibit C (Smith's
7 Safety Checklist with WSR) (ECF No. 92-3) seeking indemnification and other relief against
8 Third-Party Defendants Thomas Smith (Smith) and his company Berkeley Executives, Inc.
9 (Berkeley) along with others, on February 18, 2020;

10 WHEREAS, no claim or responsive pleading has been filed by either Smith or Berkeley,
11 each having been served, and the Clerk's entry of default against all non-appearing claimants as to
12 the LOLA proceedings (ECF No. 24), entry of default against Berkeley as to WSR's TPC (ECF No.
13 106), and entry of default against Smith as to WSR's TPC (ECF No. 169);

14 WHEREAS pursuant to the Court's Minute Order (ECF No. 171), WSR moved for a default
15 judgment to be entered (ECF No. 173) set for hearing for Oct. 19, 2023;

16 WHEREAS Smith and Berkley generally appeared and filed a motion to set aside the
17 default (ECF No. 178) contending improper service, which is set for hearing for Nov. 30, 2023; and

18 WHEREAS the Court continued the hearing on WSR's motion for default judgment until
19 Nov. 30, 2023 (Minute Order, ECF 179).

20 COMES NOW the parties and stipulate for an Order as follows:

21 1. Pursuant to Federal Rule of Civil Procedure 55(c), which allows entry of default to
22 be set aside "for good cause" and without resolving the issue of whether service was proper on
23 Smith and Berkeley (see also *Ford v. Artiga*, 2013 WL 820146, 2013 U.S. Dist. LEXIS 47647, *8
24 (E.D. Cal. 2013)), the parties stipulate, upon Court approval, to set aside the entry of default against
25 Berkeley as to WSR's TPC (ECF No. 106), and entry of default against Smith as to WSR's TPC
26 (ECF No. 169) and take off calendar WSR's motion for default judgment and Smith and Berkeley's
27 motion to set aside the defaults;

28 ///

2. Third-party Defendants Smith and Berkeley shall formally withdraw their motion and associated filed documents to set aside motion to set aside the default (ECF No. 178) contending improper service, which is set for hearing for Nov. 30, 2023.

3. Third-party Defendants Smith and Berkeley shall file their answer(s) to WSR's TPC (ECF No. 92), or before **Nov. 17, 2023**, each acknowledging by their counsel signature below proper service having been made and each waiving any and all objections to jurisdiction, insufficient process, insufficient service of process, and venue in this pending matter Case No. 2:17-cv-00653-KJM-JDP.

So Stipulated.

Dated: October 31, 2023

**WILSON, ELSE, MOSKOWITZ,
EDELMAN & DICKER LLP**

By: 

B. Otis Felder

Attorneys for Petitioner, Counter Defendant,
& Third-Party Plaintiff

WILLIAMS SPORTS RENTALS, INC.

So Stipulated.

Dated: October 31, 2023

WADE LAW GROUP

By: 

Dianna L. Albini

Attorneys for Third-Party Defendants

THOMAS SMITH & BERKELEY EXECUTIVES, INC.

ORDER

Pursuant to the parties' stipulation, it is hereby ORDERED that:

1. The Clerk of Court is directed to set aside the entry of defendants Thomas Smith and Berkeley Executives, Inc.'s default. *See* ECF Nos. 106 & 169.


2. Defendants Smith and Berkeley Executives, Inc.'s motion to set aside entry of their default, ECF No. 178, is deemed withdraw.

3. The November 30, 2023 hearing on defendants Smith and Berkeley Executives, Inc.'s motion is vacated.

4. Defendants Smith and Berkeley Executives, Inc.'s shall file an answer to Williams Sports Rentals third-party complaint by November 17, 2023.

IT IS SO ORDERED.

Dated: November 7, 2023


JEREMY D. PETERSON
UNITED STATES MAGISTRATE JUDGE