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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

MARC J. RANDAZZA, an individual,
JENNIFER RANDAZZA, an individual, and
NATALIKA RANDAZZA, an individual,

Plaintiff,

v.

CRYSTAL COX, an individual, et al.,

Defendants.

Case No.: 2:12-cv-2040-JAD-PAL

**Counterdefendant Marc J. Randazza's
Opposition to Counterclaimant's
Motion for Default Judgment**

Counterdefendant Marc J. Randazza ("Randazza"), through his undersigned counsel, hereby submits this Opposition to Counterclaimant's ("Cox") Motion for Default Judgment ("Motion") [Doc. 227].

I. INTRODUCTION

Counterclaimant's Motion does not comply with the Federal Rules of Civil Procedure or the Local Rules of the District of Nevada. Specifically, Counterclaimant failed to comply with the requirements of Fed. R. Civ. P. 55(a), which requires an affidavit in support of the Motion demonstrating that the Randazza failed to "plead or otherwise defend" against the Counterclaim.¹ Counterclaimant cannot in fact produce such an affidavit, as Randazza has actively defended against the Counterclaim from the commencement of this action. The Motion should, therefore, be denied pursuant to Fed. R. Civ. P. 55(a).

¹ Fed.R.Civ.P. 55(a).

1 In addition, Cox's Motion should be denied for failure to submit a memorandum of
 2 points and authorities as required under Local Rule 7-2, something for which she has been
 3 repeatedly admonished by this Court.

4 **II. STATEMENT OF MATERIAL FACTS**

5 Plaintiffs filed their Complaint [Doc 1.] against Crystal Cox on November 28, 2012.²

6 On January 3, 2014, Cox filed her Answer to the Complaint [Doc 23.] and her
 7 Counterclaim [Doc. 24] against approximately 73 "counter-defendants," including the then
 8 sitting judge on the case, Judge Gloria M. Navarro.³ The Counterclaim was amended [Doc. 62]
 9 by Cox on January 27, 2013, and later stricken by order of the Court [Doc. 89] on February 22,
 10 2013.⁴

11 On February 23, 201, Cox filed an amended Answer [Doc. 90],⁵ and on March 4, 2013,
 12 she filed yet another amended answer [Doc. 99].⁶ On March 11, 2013, Randazza timely filed a
 13 motion to strike Cox's amended answer [Doc. 99].⁷ On March 15, 2014, the Court granted in
 14 part [Doc. 204] Randazza's motion to strike Cox's amended answer [Doc. 99] and entered the
 15 surviving portions of the amended answer as the Superseding Amended Answer [Doc. 205] in
 16 the matter.⁸

17 On April 25, 2013, Cox moved for an order to reconsider the dismissal of her
 18 counterclaims [Doc. 24].⁹ Randazza opposed the motion on May 1, 2013,¹⁰ and Cox replied on
 19 _____

20 ² Doc. 1.

21 ³ See Doc. 23 and 24.

22 ⁴ Doc. 89.

23 ⁵ Doc. 90.

24 ⁶ Doc. 99

25 ⁷ See Doc. 101.

26 ⁸ See Doc. 204 and 205.

27 ⁹ Doc. 116.

28 ¹⁰ Doc. 123.

1 May 5, 2013.¹¹ On February 14, 2014, the Court granted [Doc. 162] in part Cox’s motion for
 2 reconsideration, permitting Cox to file “a proper counterclaim against Plaintiff Marc Randazz”
 3 and “den[ying] the motion [for reconsideration] in all other respects.”¹²

4 On February 20, 2014, Randazza timely moved to reconsider the Court’s February 14,
 5 2014, Order permitting Cox to file an amended counterclaim.¹³ On February 27, 2014, the
 6 Court denied Randazza’s motion for reconsideration.¹⁴

7 On February 24, 2014, Cox filed a “Counter Complaint” [Doc. 164] against Randazza
 8 and, in express violation of the Court’s February 14, 2014 Order [Doc. 162], Cox filed it against
 9 the Randazza Legal Group as well.¹⁵

10 Randazza then filed motions on March 12, 2014, to dismiss and strike Cox’s Counter
 11 Complaint [Doc. 164].¹⁶ After Cox filed her oppositions to these motions,¹⁷ and Randazza
 12 submitted replies in support of them,¹⁸ the Court, on May 21, 2014, entered an order [Doc. 208]
 13 denying the motion to strike and granting in part and denying in part Randazza’s motion to
 14 dismiss.¹⁹

15 The May 21, 2014, Order [Doc. 208] predominantly granted Randazza’s Motion to
 16 Dismiss. Specifically, the Court dismissed Cox’s claims for harassment, abuse of process,
 17 tortious interference with business advantage, civil conspiracy, and violation of her First
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 20 ¹¹ Doc. 124.

21 ¹² See Doc. 162.

22 ¹³ Doc. 165.

23 ¹⁴ Doc. 166.

24 ¹⁵ See Doc. 164.

25 ¹⁶ Doc. 179 and 180.

26 ¹⁷ Doc. 185 and 186.

27 ¹⁸ Doc. 191 and 192.

28 ¹⁹ Doc. 208.

1 Amendment rights.²⁰ The Court further dismissed Cox’s defamation claims to the extent they
 2 related to Randazza’s statements “in furtherance of or in the course of litigation.”²¹ Concluding
 3 its Order, the Court advised Cox she could move for leave to amend certain of her
 4 counterclaims, noting that “all allegations and claims not carried forward [into the proposed
 5 amended counterclaim] are deemed waived.”²²

6 In response, on June 2, 2014, Cox filed yet another motion [Doc. 209] to amend her
 7 counterclaims [Doc. 164].²³ This motion was accompanied by a 30-page proposed Amended
 8 Counterclaim, which was wholly duplicative of claims made in eleven other courts, including
 9 two identical claims pending in this District [Doc 209-1 and 209-2.], both of which have been
 10 dismissed with prejudice, one by Judge Gordon²⁴ and the other by Judge Du, the judge in the
 11 present action.²⁵

12 The claims in these dismissed actions raise the same claims asserted in the present
 13 matter.²⁶ Given this history, Cox was well aware of the frivolous nature of her claims at the
 14 time she asserted them in the instant matter, all of which support the dismissal of such claims
 15 under the Nevada Anti-SLAPP Act and in no way support the entry of a default.

16 Accordingly, on June 13, 2014, Randazza opposed Cox’s motion to amend her Counter
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18 ²⁰ See Doc. 208

19 ²¹ *Id.* at 16.

20 ²² *Id.* at 17.

21 ²³ Doc. 209.

22 ²⁴ *Cox v. Carr, et al.*, 2:13-cv-00938-APG-GWF (D. Nev.) (the “938 Action”) transferred from the Southern District of New York (1:13-cv-03257-LAP) and
 23 subsequently dismissed with prejudice by Judge Gordon on the recommendation of
 24 Magistrate Foley (D. Nev. December 6, 2013)

25 ²⁵ *Cox v. Randazza, et al.*, 2:13-cv-00297-MMD-VCF (D. Nev.): 2013 U.S. Dist. LEXIS
 26 168741 (D. Nev. Sept. 16, 2013); 2014 U.S. Dist. LEXIS 66206 (D. Nev. Apr. 21, 2014);
 27 2014 U.S. Dist. LEXIS 66582 (D. Nev. May 14, 2014), dismissed [Doc. 31 and 32] by
 Judge Miranda M. Du on May 14, 2014 in accord with Magistrate Ferenbach’s
 recommendations [Doc. 30].

28 ²⁶ See *Cox v. Carr* [cited in fn. 24 herein] and *Cox v. Randazza* [cited in fn 25, herein].

1 Complaint [Doc. 164],²⁷ and on June 27, 2014, Cox filed a reply in support of it.²⁸ On July 8,
 2 2014, the Court entered an Order [Doc. 213] denying Cox's motion to amend the February 24,
 3 2014, Counter Complaint [Doc. 164],²⁹ and dismissed with prejudice Claim 3 for abuse of
 4 process, concluding that "Cox is left with two counterclaims: (1) legal malpractice as plead in
 5 her Counter Complaint [Doc. 164], and (2) defamation as pled in her Counter Complaint [Doc.
 6 164] and limited by the Court's May 21, 2014, Order [Doc. 208]."³⁰

7 On July 15, 2014, the Court entered a discovery Scheduling Order,³¹ and from July 15,
 8 2014 through August 8, 2014, the parties engaged in discovery motion practice.³²

9 Plaintiff maintains that neither of Cox's remaining two claims have any merit, as
 10 evidenced by the *sua sponte* dismissal of these same claims in related actions against the very
 11 same counterdefendant, so on August 14 and 15, 2014, Randazza filed an Answer [Doc. 220]
 12 and Amended Answer [Doc. 223] to the Cox Counter Complaint [Doc. 164] in contemplation
 13 of, and in connection with an Anti-SLAPP motion to dismiss Cox's counterclaims [Doc. 224].³³
 14 Four days later, on August 18, 2014, Cox brought the instant "Motion for Default Judgment"
 15 [Doc. 227].³⁴

16 Cox's Motion is moot and untimely under the Rules and should be denied.

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21 ²⁷ Doc. 210.

22 ²⁸ Doc. 212.

23 ²⁹ Doc. 213.

24 ³⁰ See *id.*

25 ³¹ Doc. 215

26 ³² See Doc. 213; *see also* July 8, 2014, Court Minute Order.

27 ³³ See Doc. 224.

28 ³⁴ Doc. 227.

1 **III. ARGUMENT**

2 **A. Counterclaimant's Motion For Default should be denied because it is**
 3 **procedurally improper.**

4 Cox's Motion for Default should be denied for failure to comply with both the Federal
 5 Rules of Civil Procedure and the Local Rules. Fed. R. Civ. P. 55(a) provides in pertinent part:

6 When a party against whom a judgment for affirmative relief is sought has
 7 failed to plead or otherwise defend, and that failure is shown by affidavit
 8 or otherwise, the clerk must enter the party's default.

9 Cox failed to provide an affidavit in support of her Motion asserting that Randazza has
 10 "failed to plead or otherwise defend" as required by Fed. R. Civ. P. 55(a) before a default may
 11 be entered.³⁵ Cox cannot meet the requirements of the Federal Rules of Civil Procedure for the
 12 Court to enter a default in this matter, because Randazza has actively defended against the
 13 Counterclaim since its filing on February 4, 2014, as set forth in the facts recited above.

14 Finally, Counterclaimant has again failed to comply with the Local Rules of the District
 15 of Nevada. Specifically, Local Rule 7-2(a) provides as follows:

16 All motions, unless made during a hearing or trial, shall be in writing and
 17 served on all other parties who have appeared. The motion shall be
 18 supported by a memorandum of points and authorities

19 In addition, Local Rule 7-2(d) provides the following:

20 The failure of a moving party to file points and authorities in support of
 21 the motion shall constitute a consent to the denial of the motion.

22 In filing the instant Motion for Default, Cox has again failed to comply with these Local
 23 Rules and did not include a memorandum of points and authorities in support of the Motion or
 24 cite to any controlling authorities as required by LR 7-2(a). As a result, Cox consents to the
 25 denial of her Motion for Default pursuant to the Local Rules.³⁶ Accordingly, the Motion for
 26 Default should be denied based on Cox's failure to comply with the Federal Rules of Civil
 27 Procedure and Local Rules of the District of Nevada.

28 ³⁵ See Fed.R.Civ.P. 55(a); *see also* Motion [Doc. 227].

³⁶ See LR 7-2(d).

B. The entry of default is improper because Randazza filed his Answer and was not in default prior to the filing of the Instant Motion.

As set forth above, Cox first filed her Counter Complaint on February 24, 2014.³⁷ On March 12, 2014, Randazza replied to Cox's counterclaims with a Motion to Dismiss.³⁸ The Court dramatically limited the scope of Cox's counterclaims in its Order on May 21, 2014.³⁹ Mere days later, before an Answer would have come due, Cox filed her Motion for Leave to Amend her counterclaims.⁴⁰ Randazza then filed a Motion in Opposition to Cox's Motion for Leave to Amend on June 13, 2013.⁴¹ The Court denied Cox's Motion for Leave to Amend, and finally clarified the exact terms of Cox's counterclaims on July 8, 2014.⁴²

Only then, was there a final counterclaim to which Randazza could respond.⁴³ After engaging in motion practice regarding discovery disputes from July 15, 2014 through August 8, 2014, Randazza filed an Answer [Doc. 220] and an Amended Answer [Doc. 223] to the now Court clarified counterclaims.

Then, in recognition of the *sua sponte* dismissals of the exact same claims surviving in the present action, Randazza filed a timely Anti-SLAPP Special Motion to Dismiss [Doc. 224] on August 15, 2014.⁴⁴ Days later on August 18, 2014, and well after having received notice of the filings of both an Answer and an Amended Answer, Cox then improperly filed her Motion seeking a default against Randazza.⁴⁵

³⁷ Doc. 164.

³⁸ Doc. 179.

³⁹ Doc. 208.

⁴⁰ Doc. 209 and 209-1.

⁴¹ Doc. 210.

⁴² *See* Doc. 213.

⁴³ *Id.*

⁴⁴ Doc. 224.

⁴⁵ Doc. 227.

1 Cox's untimely Motion, brought four days after Randazza filed his Answer, ought to be
2 denied as moot.

3 **C. The entry of default is improper because Randazza has actively participated**
4 **in this litigation.**

5 This Court has previously held in this very action that:

6 [w]here a party has appeared before the Court, the party is generally considered
7 to have otherwise defended the suit. Thus, where a party defended against an
initial complaint, but later failed to timely file responses to subsequently filed
motions, entry of clerk's default is inappropriate.⁴⁶

8 This holding was in response to Cox's failure to: (i) respond to any pleadings filed by
9 Randazza, (ii) participate in discovery, (iii) attend her deposition, and (iv) maintain any
10 operative mailing address with the Court for over four months.⁴⁷ In response to such egregious
11 failures, the Court issued not one, but two, Orders to Show Cause, requiring Cox to adequately
12 explain why she had refused to participate in litigation.⁴⁸ The Court even admonished Cox that
13 her "failure to comply with these instructions will result in her answer being stricken, default
14 being entered against her, and potentially other sanctions."⁴⁹ In spite of these harsh
15 admonishments, and despite Cox's failure to comply with the Court's orders, because Cox
16 submitted a response—albeit one non-responsive to the Court's orders—the Court interpreted
17 Cox's failed attempt as evidence of an intent participate, negating the propriety of an entry of
18 default against her.⁵⁰

19 Randazza's intent to participate in this litigation and specifically to challenge the
20 numerous counterclaims, amended counter-claims, and finally court-revised and clarified
21 amended counterclaims, is without question. Randazza has every cognizable claim and
22 challenge that can be asserted against the Cox counterclaims in the course of the over 227
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24 ⁴⁶ Doc. 173 at 2.

25 ⁴⁷ Doc. 157-1.

26 ⁴⁸ See Doc. 161 and 168.

27 ⁴⁹ Doc. 168 at 4.

28 ⁵⁰ See Doc. 173.

1 docket entries of this action, including as set forth herein above, numerous motions to dismiss
2 and strike such counterclaims, and most recently an Anti-SLAPP motion to dismiss them.⁵¹
3 Randazza's intention to appear and otherwise defend this action is clear and unequivocal. He
4 has more than demonstrated an intent to defend sufficient to preclude the entry of default under
5 Fed. R. Civ. 55(a). As such, an entry of default is utterly without merit and should be denied.

6 **IV. CONCLUSION**

7 Based on the foregoing, Randazza respectfully requests the Court deny Cox's Motion for
8 Default Judgment.

9 DATED this 2nd day of September, 2014.

10 Respectfully Submitted,

11 **WEIDE & MILLER, LTD.**

12
13 /s/ F. Christopher Austin
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17 Attorney for Attorneys for Plaintiff, Counterdefendant
18 Marc J. Randazza
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28 ⁵¹ See generally Civil Docket for Case 2:12-cv-2040; see also Doc. 224.

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Weide & Miller, Ltd. and that on September 2, 2014, I served a full, true and correct copy of the foregoing **Counterdefendant Marc J. Randazza's Opposition to Counterclaimant's Motion for Default Judgment** via the United States District Court's CM/ECF filing system upon the following:

RANDAZZA LEGAL GROUP
Ronald D. Green, Esq.
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and

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and via U.S. Mail to the party below requesting notice:

CRYSTAL L. COX,
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/s/ F. Christopher Austin
An employee of WEIDE & MILLER, LTD.