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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Patricia A. Piccarreta,

10 Plaintiff,

11 v.

12 Harmony Hospice of Scottsdale LLC, et al.,

13 Defendants.

No. CV-12-00533-PHX-DGC

**ORDER AND DEFAULT
JUDGMENT**

14 Plaintiff has moved for a default judgment pursuant to Rule 55(b) and the Court's
15 March 4, 2014 order directing her to do so. Doc. 64. Defendant has not responded. The
16 Court will grant the motion.

17 **I. Background.**

18 Plaintiff filed this action under the Americans with Disabilities Act, 42 U.S.C.
19 § 12101 *et seq.*, against her former employer, Harmony Hospice of Scottsdale, LLC and
20 the Hospice of Scottsdale, LLC, alleging failure to provide reasonable accommodation
21 for her disability and retaliation in employment. Doc. 1. Both Defendants thereafter
22 filed Articles of Termination with the Arizona Corporation Commission, and Defendants'
23 counsel was permitted to withdraw after the Court made clear that his withdrawal would
24 result in a default judgment. Docs. 63.

25 **II. The Motion for Default Judgment.**

26 The Court has discretion to grant a default judgment. *See* Fed. R. Civ. P. 55(b)(2);
27 *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). Factors the Court may consider
28 include (1) the possibility of prejudice to the plaintiff, (2) the merits of the claim, (3) the

1 sufficiency of the complaint, (4) the amount of money at stake, (5) the possibility of a
2 dispute concerning material facts, (6) whether default was due to excusable neglect, and
3 (7) the policy favoring a decision on the merits. *See Eitel v. McCool*, 782 F.2d 1470,
4 1471-72 (9th Cir. 1986). In applying the *Eitel* factors, “the factual allegations of the
5 complaint, except those relating to the amount of damages, will be taken as true.”
6 *Geddes v. United Fin. Group*, 559 F.2d 557, 560 (9th Cir. 1977).

7 **A. Possible Prejudice to Plaintiff.**

8 The first *Eitel* factor weighs in favor of granting Plaintiff’s motion. Defendants’
9 counsel has withdrawn and Defendants as entities are in the process of termination. If
10 Plaintiff’s motion for default judgment is not granted, Plaintiff “will likely be without
11 other recourse for recovery.” *PepsiCo, Inc. v. Cal. Security Cans*, 238 F. Supp. 2d 1172,
12 1177 (C.D. Cal. 2002).

13 **B. The Merits of Plaintiff’s Claims and the Sufficiency of the Complaint.**

14 The second and third *Eitel* factors favor a default judgment where the complaint
15 sufficiently states a claim for relief. *See Cal. Security Cans*, 238 F. Supp. 2d at 1175;
16 *Danning v. Lavine*, 572 F.2d 1386, 1388-89 (9th Cir. 1978)). A review of Plaintiff’s
17 complaint and the exhibits attached thereto shows that Plaintiff has stated valid causes of
18 action against Defendants. *See* Doc. 1.

19 **C. The Amount of Money at Stake.**

20 Under the fourth *Eitel* factor, the court considers the amount of money at stake in
21 relation to the seriousness of the defendants’ conduct. *See Cal. Security Cans*, 238 F.
22 Supp. 2d at 1176-77. Plaintiff seeks compensatory damages of \$50,000, the statutory
23 limit for an employer of Defendants’ size, and injunctive relief in the form of back pay
24 totaling \$213,660 for violations of 42 U.S.C. § 12112 (b)(5)(A) and 42 U.S.C. 12203(a).
25 Plaintiff has submitted an affidavit in support of her request for back pay, detailing her
26 wags and hours missed. Defendants do not dispute this evidence.

27 **D. Possible Dispute Concerning Material Facts.**

28 Upon entry of default, “the factual allegations of the complaint, except those

1 relating to the amount of damages, will be taken as true.” *TeleVideo Sys., Inc. v.*
2 *Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987). Given the sufficiency of the complaint
3 and Defendant’s default, “no genuine dispute of material facts would preclude granting
4 [Plaintiff’s] motion.” *Cal. Security Cans*, 238 F. Supp. 2d at 1177.

5 **E. Whether Default Was Due to Excusable Neglect.**

6 There is no evidence of excusable neglect by Defendants, whose counsel withdrew
7 from the case. Defendants have offered no argument that default is excusable.

8 **F. The Policy Favoring a Decision on the Merits.**

9 “Cases should be decided upon their merits whenever reasonably possible,” *Eitel*,
10 782 F.2d at 1472, but the mere existence of Rule 55(b) “indicates that this preference,
11 standing alone, is not dispositive,” *Cal. Security Cans*, 238 F. Supp. at 1177 (citation
12 omitted). The withdrawal of defense counsel in this case “makes a decision on the merits
13 impractical, if not impossible.” *Id.* The Court therefore is not precluded from entering
14 default judgment against Defendants. *See id.*; *Gemmel*, 2008 WL 65604 at *5.

15 **G. Conclusion.**

16 Having reviewed Plaintiff’s motion and supporting documents, and having
17 considered the *Eitel* factors as a whole, the Court concludes that entry of default
18 judgment is appropriate. The Court will grant default judgment against Defendants in the
19 amount of \$263,660 for violations of Title 42 U.S.C. §§ 12112(b)(5)(A) and 12203(a).

20 **III. Attorney’s Fees.**

21 Plaintiff has also requested an award of attorneys’ fees and costs under 42 U.S.C.
22 § 12205 in the amount of \$50,394.10. Doc. 64 at 6-7. Plaintiff’s attorneys have
23 submitted an affidavit in support and a billing detail for 193.50 hours worked over the
24 course of two years. Defendants have not disputed these amounts. The Court finds the
25 amount requested to be reasonable and will grant Plaintiff’s request for attorney’s fees.

26 **IT IS ORDERED:**

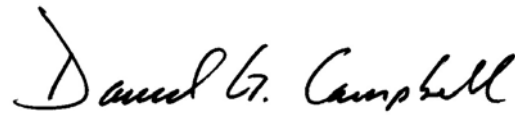
- 27 1. Plaintiff’s motion for default judgment (Doc. 64) is **granted**.
28 2. Default judgment is entered in favor of Plaintiff and against Defendants

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Harmony Hospice of Scottsdale, LLC and Hospice of Scottsdale, LLC in the amount of \$263,660.

- 3. Plaintiff's request for attorney's fees is **granted** in the amount of \$50,394.10.
- 4. Defendants' motion in limine (Doc. 52) is found to be **moot**.

Dated this 6th day of May, 2014.



David G. Campbell
United States District Judge