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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Composite Industrie SA,

10 Plaintiff,

11 v.

12 Vision Air America Incorporated, et al.,

13 Defendants.  
14

No. CV-13-01984-PHX-JAT

**ORDER**

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16 Before the Court is Plaintiff's motion for entry of default judgment. (Doc. 16). The  
17 Court now rules on the motion.

18 In support of its Motion, Plaintiff offers declarations of its Vice President and its  
19 attorney, specifying the amount of damages and costs Plaintiff has incurred and the  
20 interest that has accrued. Plaintiff also offers the written agreement and invoices relating  
21 to the contract at issue.

22 Once the Clerk of Court has entered default, the plaintiff may apply for entry of  
23 default judgment. *See* Fed. R. Civ. P. 55(b)(2). Rule 55(b) provides for the entry of  
24 default judgment by the Clerk or by the Court. Entry by the Clerk is proper when the  
25 amount of damages is "for a sum certain or a sum that can be made certain by  
26 computation." Fed. R. Civ. P. 55(b)(1). Entry by the Court is proper "[i]n all other  
27 cases." Fed. R. Civ. P. 55(b)(2). Plaintiff originally sought entry by the Clerk under Rule  
28 55(b)(1), but as explained below, some amounts requested by Plaintiff were not clear to

1 the Clerk or to the Court. Accordingly, the Court considers the motion under Rule  
2 55(b)(2).

3 When the Court considers the entry of default judgment, the well-pleaded “factual  
4 allegations of the complaint, except those relating to the amount of damages, will be  
5 taken as true.” *Geddes v. United Fin. Group*, 559 F.2d 557, 560 (9th Cir. 1977) (citing  
6 *Pope v. United States*, 323 U.S. 1, 12 (1944)); *see TeleVideo Sys., Inc. v. Heidenthal*, 826  
7 F.2d 915, 917 (9th Cir. 1987); *Danning v. Lavine*, 572 F.2d 1386, 1388 (9th Cir. 1978).  
8 However, “[a] default judgment must not differ in kind from, or exceed in amount, what  
9 is demanded in the pleadings.” Fed. R. Civ. P. 54(c); *see* Fed. R. Civ. P. 8(a)(3). Thus,  
10 “necessary facts not contained in the pleadings, and claims which are legally insufficient,  
11 are not established by default.” *Cripps v. Life Ins. Co. of N. Am.*, 980 F.2d 1261, 1267  
12 (9th Cir. 1992) (citing *Danning*, 572 F.2d at 1388). Unless “the amount claimed is  
13 liquidated or capable of ascertainment from definite figures,” the Court generally should  
14 hold a hearing to determine the proper amount of damages. *Dundee Cement Co. v.*  
15 *Howard Pipe & Concrete Prods., Inc.*, 722 F.2d 1319, 1323 (7th Cir. 1983); *see* Fed. R.  
16 Civ. P. 55(b)(2).

17 Here, the declaration of Plaintiff’s Vice President and the written agreement  
18 produced by Plaintiff show that Defendants agreed to pay \$87,230.91 as well as a 2% per  
19 month late payment penalty. The record also establishes that Defendants paid \$20,000  
20 toward this debt in March of 2012. Plaintiff’s materials also establish that the total  
21 amount in late penalties that have accrued from the March 2012 payment until the filing  
22 of this action in September 2013 is \$22,848 (\$1,344 per month x 17 months). Thus,  
23 according to Plaintiff’s materials submitted in support of its motion for default judgment,  
24 “the total owing, due, and unpaid by [Defendants] . . . is \$90,078.91 (\$67,230.91 unpaid  
25 invoice + \$22,848.00 late payment penalty).” The Complaint demands the same amount  
26 for damages. This amount is “ascertainable from definite figures,” *Dundee Cement Co.*,  
27 722 F.2d at 1323, so no hearing is necessary to determine the amount owed Plaintiff  
28 under the breach of contract claim. Because the damages demanded by the Complaint and

1 motion for default judgment are identical in amount and kind, the Court will enter default  
2 judgment for Plaintiff in the amount of \$90,078.91.

3 The Court will similarly enter default judgment on Plaintiff's demand for costs.  
4 The Complaint clearly demanded "costs of suit herein incurred," and the declaration of  
5 Plaintiff's counsel sufficiently establishes that Plaintiff has incurred a \$400 filing fee and  
6 \$485 in service of process fees. Accordingly, the Court will enter default judgment for  
7 Plaintiff in the amount of \$885 without conducting a hearing.

8 Plaintiff also initially requested prejudgment interest in the amount of \$13,440.  
9 Because the correct method of calculating interest was unclear from the motion for  
10 default judgment, the Court scheduled a hearing. The day before the hearing, Plaintiff  
11 filed a Notice of Lodging Proposed Form of Default Judgment, (Doc. 21), in which it  
12 amended or clarified its interest request. Specifically, Plaintiff stated that under A.R.S.  
13 § 44-1201(A), it is entitled to an interest rate of 10% per annum on the principal amount  
14 and late penalties owed. Plaintiff stated that the interest on the principal amount should  
15 begin accruing as of February 29, 2012, and the interest on the late penalties should begin  
16 accruing on August 1, 2013.<sup>1</sup> These rates and dates parallel the Complaint's request for  
17 interest "at the legal rate." (Doc. 1 at ¶¶ 1-2). The Court will therefore award  
18 prejudgment interest on the principle and late penalties at the statutory rate of 10% per  
19 annum.

20 Plaintiff also requests that the Court award interest on the taxable costs, and that  
21 all interest be awarded from the accrual dates "until paid in full." However, pre-judgment  
22 interest, as the name implies, does not accrue after judgment. This, of course, does not  
23 foreclose Plaintiff's right to post-judgment interest before the judgment is satisfied, *see*  
24 28 U.S.C. § 1961, but the pre-judgment interest award reflects what Plaintiff is owed at  
25 entry of default judgment, not what it may be owed at some time in the future. Thus, the  
26 Court will award pre-judgment interest only on the principal and late penalties, according

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28 <sup>1</sup> This date is apparently derived from the last month Plaintiff charged late penalties, July 2013.

1 to the accrual dates listed above, ending on the date of this judgment.

2 In sum, the Court will award prejudgment interest in the amount of \$19,609.02  
3 (\$67,230.91 x 10% x (35 months / 12)) for the principal amount and \$3,427.20 (( $\$22,848$   
4 x 10% x (18 months / 12)) for the late penalty amount, a total of \$23,036.22. The Court  
5 will also award Plaintiff \$90,078.91 in damages for the principal and late penalties, and  
6 \$885 in costs. Therefore, the Court will grant a total default judgment award of  
7 \$114,000.13.

8 Accordingly,

9 **IT IS ORDERED** that Plaintiff's motion for entry of default judgment, (Doc. 16),  
10 is **GRANTED**. Defendants Vision Air America Incorporated and Artur Niewiadowski  
11 are jointly and severally liable to Plaintiff Composite Industrie SA for \$114,000.13, plus  
12 post-judgment interest accruing from today at the applicable federal rate.

13 Dated this 17th day of February, 2015.

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James A. Teilborg  
Senior United States District Judge