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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

David Hammitt,  
  
Plaintiff,  
  
vs.  
  
Northeast Collection Bureau, Inc.,  
  
Defendant.

No. CV-14-00391-PHX-SPL

**ORDER**

Before the Court is Plaintiff David Hammitt’s Motion for Default Judgment (Doc. 12). Oral argument has not been requested.

On February 28, 2014, Plaintiff filed a Complaint (Doc. 1) against Defendant Northeast Collection Bureau Incorporated, bringing claims for violations of the Fair Debt Collections Practices Act (“FDCPA”), 15 U.S.C. §§ 1692, *et seq.* Default was entered against Defendant under Rule 55(a) of the Federal Rules of Civil Procedure (*see* Doc. 9). Therefore, the Court has discretion to grant default judgment pursuant to Rule 55(b). *See Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980); *Draper v. Coombs*, 792 F.2d 915, 924 (9th Cir. 1986).

Factors the Court considers in deciding whether to grant default judgment include: (1) the possibility of prejudice to Plaintiff; (2) the merits of the claims; (3) the sufficiency of the complaint; (4) the amount of money at stake; (5) the possibility of a dispute concerning material facts; (6) whether default was due to excusable neglect; and (7) the policy favoring a decision on the merits. *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th

1 Cir. 1986). In applying these *Eitel* factors, “the factual allegations of the complaint,  
2 except those relating to the amount of damages, will be taken as true.” *Geddes v. United*  
3 *Fin. Group*, 559 F.2d 557, 560 (9th Cir. 1977).

4 Upon review of Plaintiff’s proof of service (Doc. 7), the Court finds that the  
5 Defendant has been properly served as required by Rule 4 of the Federal Rules of Civil  
6 Procedure. Defendant was served on March 4, 2014, in a manner authorized by the State  
7 in which this District Court sits under Rule 4.2(c) of the Arizona Rules of Civil  
8 Procedure. *See* Fed. R. Civ. P. 4(e)(1). The Court further finds that it has federal-question  
9 jurisdiction under 28 U.S.C. § 1331, that venue is proper in this Court because a  
10 substantial part of the events giving rise to this claim occurred in this judicial district, and  
11 that it has personal jurisdiction over Defendant because their conduct caused harm in this  
12 district and they had or should have had an expectation to be hauled into court in this  
13 district.

14 Having considered Plaintiff’s motion, which addresses each of the *Eitel* factors  
15 (*see* Doc. 12 at 8-12), the Court finds that granting default judgment for Plaintiff is  
16 appropriate. Defendant has not made an appearance in this case, and the allegations are  
17 undefended. Although service was made, Defendant has failed to appear and defend this  
18 suit for approximately four months. Consequently, the Court concludes that Defendant’s  
19 default is not due to excusable neglect. The complaint alleges several violations of the  
20 FDCPA by Defendant, *see, e.g.*, 15 U.S.C. §§ 1692b(2), 1692c(b), 1692e(2)(A),  
21 1692e(4), 1692e(5), 1692e(10), 1692f(1), and the material facts required to establish such  
22 violations have been sufficiently pled against the Defendant. Defendant’s absence from  
23 this case precludes a decision on the merits. Accordingly, the Court will take all factual  
24 allegations in Plaintiff’s complaint, except those relating to the amount of damages, as  
25 true, and finds Defendant liable for the conduct alleged.

26 Having determined liability, the remaining issue is appropriate relief. In a default  
27 judgment action, the amount of damages will not automatically be assumed true. *See*  
28 *Geddes*, 559 F.2d at 560 (stating that “the factual allegations of the complaint, except

1 those relating to the amount of damages, will be taken as true”). Here, Plaintiff requests  
2 actual damages, statutory damages, costs, and attorney fees.

3 First, as to statutory damages, the FDCPA permits a statutory award of up to  
4 \$1,000.00 against each liable debt collector. 15 U.S.C. § 1692k(a)(2)(A). Here,  
5 Defendant called Plaintiff’s mother demanding payment of Plaintiff’s alleged debt,  
6 discussed with her concerning Plaintiff’s purported debt, and threatened her that unless  
7 the debt was paid that day, a warrant would issue for Plaintiff’s arrest. In light of the  
8 nature of the conduct used by Defendant in connection with the collection of Plaintiff’s  
9 alleged debt, the Court will award Plaintiff statutory damages in the amount of \$1,000.00.  
10 Second, Plaintiff’s costs and attorney fees are well-documented (*see* Doc. 12). The Court  
11 finds the evidence supports the costs requested and the requested fees are reasonable, and  
12 will therefore award \$3,430.00 in attorney’s fees and \$407.40 in costs pursuant to 15  
13 U.S.C. § 1692k(a)(3).

14 Lastly, the FDCPA permits actual damages sustained as a result of the debt  
15 collector’s conduct. 15 U.S.C. § 1692k(a)(1). Plaintiff has submitted an affidavit stating  
16 that Plaintiff’s mother paid Defendant \$345.00 for Plaintiff’s alleged debt, for which  
17 Plaintiff was required to repay to his mother. (*See* Doc. 12-2 at 2.) However, Plaintiff has  
18 presented no evidence in support of this statement, such as proof of payment of this  
19 amount by Plaintiff’s mother to Defendant, or payment of this amount from Plaintiff to  
20 his mother. Therefore, the Court cannot, on the record before it, determine that actual  
21 damages should be awarded. Plaintiff will, however, be offered an opportunity to submit  
22 evidence to the Court sufficient to establish the amount of actual damages. Accordingly,

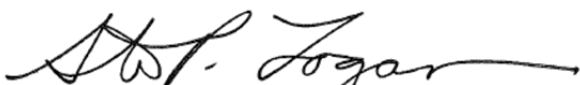
23 **IT IS ORDERED:**

- 24 1. That Plaintiff’s Motion for Default Judgment (Doc. 12) is **granted** as set  
25 forth above;
- 26 2. That Plaintiff is awarded statutory damages pursuant to 15 U.S.C. §  
27 1692k(a)(2)(A) in the amount of **\$1,000.00** against Defendant;
- 28 3. That Plaintiff is awarded costs and attorney fees pursuant to 15 U.S.C. §

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1692k(a)(3) in the amount of **\$3,837.40** against Defendant; and  
4. That Plaintiff shall have until **August 4, 2014**, to file evidence in support of  
its request for actual damages pursuant to 15 U.S.C. § 1692k(a)(1).

Dated this 21st day of July, 2014.

  
Honorable Steven P. Logan  
United States District Judge