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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

HeliQwest International, Inc.,

Plaintiff,

vs.

Patriot Towers, Inc.,

Defendant.

No. CV-14-02639-PHX-PGR

ORDER

Pending before the Court is plaintiff HeliQwest International, Inc.’s Application for Entry of Default Judgment (Doc. 15). Having considered the motion in light of the relevant record, the Court finds that the motion should be granted pursuant to Fed.R.Civ.P. 55(b)(2).

Background

The plaintiff commenced this action, which is based on diversity of citizenship jurisdiction, on December 5, 2014; its complaint alleges claims for breach of contract and unjust enrichment. The plaintiff, a Colorado-based helicopter charter company specializing in external load and specialty operations, entered into a Master Services Agreement (“MSA”) and a Work Order/Flight Quote agreement (“Work Order”) with

1 defendant Patriot Towers, Inc. in April 2013; the defendant is alleged to be an
2 Arizona corporation that specializes in the engineering, installation, testing,
3 integration, and maintenance of various telecommunication networks. The plaintiff
4 alleges that it performed helicopter services for the defendant in connection with the
5 MSA and Work Order and that the defendant paid the plaintiff's invoices without
6 objection through April 14, 2014, but then the defendant stopped making payments
7 leaving a large sum that remains due and owing. The parties' MSA provides that it
8 "shall be governed by, and construed in accordance with, the laws of the State of
9 Arizona, without regard to the conflict of law principles." MSA ¶ 32.01.

10 The defendant was served with process through the Arizona Corporation
11 Commission on December 19, 2014 (Doc. 8). The plaintiff filed its Application for
12 Entry of Default on March 2, 2015 and served it on the defendant on March 3, 2015
13 (Doc. 13), and the Clerk of the Court entered default against the defendant on March
14 3, 2015 (Doc. 14). In its pending Application for Entry of Default Judgment, filed on
15 March 3, 2015, the plaintiff seeks damages of \$241,139.21 and attorneys' fees and
16 costs in the amount of \$7,580.00.

17 Discussion

18 A. Whether default judgment should be entered

19 Although the plaintiff never mentions it, the Court must consider seven factors
20 in determining whether to exercise its discretion to enter default judgment: (1) the
21 possibility of prejudice to the plaintiff; (2) the merits of the plaintiff's substantive
22 claim; (3) the sufficiency of the complaint; (4) the sum of money at stake; (5) the
23 possibility of a dispute concerning material facts; (6) whether the default was due to
24 excusable neglect; and (7) the strong policy underlying the Federal Rules of Civil
25 Procedure favoring decisions on the merits. Eitel v. McCool, 782 F.2d 1470, 1471-72
26 (9th Cir.1986). In considering the Eitel factors, the Court takes all factual allegations

1 in the complaint as true, except for those relating to damages. See TeleVideo
2 Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir.1987).

3 The first factor weighs in favor of granting the plaintiff's motion because the
4 plaintiff will be prejudiced if this action is not resolved since it may be left without any
5 other recourse to recover the monies owed it by the defendant.

6 The second and third factors favor a default judgment because the complaint
7 is both factually and legally sufficient and by defaulting the defendant has admitted
8 the non-damages related allegations in the complaint.

9 The fourth factor also favors a default judgment because the contract-based
10 damages of \$241,139.21 is a significant sum and the plaintiff has submitted
11 evidence showing that the defendant has not paid that sum after contractually
12 agreeing to do so.

13 The fifth factor also favors a default judgment because the sufficiency of the
14 complaint and the defendant's default, along with the plaintiff's submission of
15 evidence clearly supporting its allegations, establish that a dispute regarding
16 material facts is not a genuine possibility.

17 The sixth factor further favors a default judgment because the likelihood of the
18 defendant's default being the result of excusable neglect is not a possibility since the
19 record clearly establishes that the defendant has been aware of this action: the
20 defendant was properly served with the complaint and the default application, and
21 the plaintiff's evidence shows that the plaintiff's counsel communicated several times
22 with the defendant's counsel both before and after the filing of this action in an effort
23 to resolve the matter.

24 The seventh factor favors default judgment notwithstanding the strong public
25 policy favoring decisions on the merits because the defendant's failure to defend this
26 action renders an adjudication on the merits impractical, if not impossible.

1 Having reviewed all of the Eitel factors, the Court concludes that the entry of
2 default judgment against the defendant is appropriate.

3 B. Amount of damages

4 The Court concludes that the plaintiff's submitted evidence regarding
5 contractual damages, which consists of a declaration by Brent Miners (Doc. 15-3),
6 the plaintiff's Controller, the parties' contracts (Doc. 15-4), and the plaintiff's invoices
7 to the defendant, which are supported by the plaintiff's flight reports (Doc. 15-5), are
8 sufficient to establish that the defendant owes the plaintiff the sum of \$241,139.21.

9 C. Attorneys' fees

10 The defendant seeks the sum of \$7,580.00 for its attorneys' fees incurred in
11 this matter between September 17, 2014 and January 14, 2015. In support of this
12 request, the plaintiff has submitted a declaration by Mark Wiletsky (Doc. 15-1), its
13 lead counsel, and sufficiently detailed time sheets for counsel and staff (Doc. 15-2).
14 The requested fee amount is based on 22.7 hours of work performed by three
15 attorneys, Mark Wiletsky (11 hours in 2014 and .4 hours in 2015), Joseph Neguse
16 (1.1 hours in 2014 and 2.2 hours in 2015), and J. Marcus Painter (3.4 hours in
17 2014), and two paralegals, Lisa Prodanovich (1 hour in 2014) and Karen Kinnear
18 (2.7 hours in 2014 and .9 hours in 2015). Wiletsky's declaration states that his billing
19 rate was \$360 per hour for 2014 and \$370 per hour for 2015, that Mr. Painter's
20 billing rate was \$460 per hour for 2014, that Mr. Neguse's billing rate was \$275 per
21 hour for 2014 and \$285 per hour for 2015, that Ms. Prodanovich's billing rate was
22 \$200 per hour for 2014, and that Ms. Kinnear's billing rate was \$215 per hour for
23 2014 and \$220 per hour for 2015.

24 Since this is a diversity-based action, Arizona substantive law determines
25 whether the plaintiff is entitled to an award of attorneys' fees. Carnes v. Zamani, 488
26 F.3d 1057, 1059 (9th Cir.2007). Under the applicable Arizona law, which the plaintiff

1 does not discuss, a “contractual provision for attorneys’ fees will be enforced
2 according to its terms.” F.D.I.C. v. Adams, 931 P.2d 1095, 1105 (Ariz.App.1996).
3 The parties’ contract provides that “[i]f either party employs an attorney or
4 commences legal proceedings to enforce the provisions of this Agreement, the
5 prevailing party shall be entitled to recover from the other reasonable costs incurred
6 in connection with such enforcement, including, but not limited to, attorneys’ fees
7 and costs of investigation and litigation.” MSA ¶ 16.04. The Court concludes that the
8 plaintiff, as the prevailing party, is contractually entitled to an award of reasonable
9 attorneys’ fees.

10 Under the parties’ contract, the attorneys’ fees awarded to the plaintiff must
11 be “reasonable.” The Court concludes that the total number hours claimed, *i.e.*, 22.7
12 hours, is reasonable given the record of this action.

13 In determining the reasonableness of the billing rates, the Court’s beginning
14 point “is the determination of the actual billing rate which the lawyer charged in the
15 particular matter” because “in corporate and commercial litigation between fee-
16 paying clients, there is no need to determine the reasonable hourly rate prevailing
17 in the community for similar work because the rate charged by the lawyer to the
18 client is the best indication of what is reasonable under the circumstances of the
19 particular case.” Schweiger v. China Doll Restaurant, Inc., 673 P.2d 927, 931-32
20 (Ariz.App.1983). The Court notes that while the plaintiff, through Mr. Wiletsky’s
21 declaration, has provided the Court with the attorneys’ and paralegals’ billing rates,
22 the declaration does not specifically state that these rates were what the plaintiff was
23 actually charged, nor does the declaration set forth the specific fee arrangement
24 between the plaintiff and its counsel.

25 While the Court assumes that the plaintiff was billed at the stated rates, the
26 Court may nevertheless determine that the agreed-upon rates are unreasonable and

1 may utilize a lesser rate. *Id.* at 932. The Court is tempted to do so here, particularly
2 with regard to the billing rates of the paralegals, because conspicuously absent from
3 Mr. Wiletsky's declaration is any information at all about the professional
4 backgrounds, experience and qualifications of any of the attorneys or paralegals,
5 which is information that is normally submitted in fee applications to justify billing
6 rates.

7 Because the plaintiff has not made any sufficient effort in its memorandum to
8 discuss the governing Ninth Circuit and Arizona law and because Mr. Wiletsky's
9 declaration is deficient in a significant respect, together with the fact that the
10 memorandum does not comply in certain respects with procedural requirements of
11 this Court's Local Rules, e.g., it does not fully comply with LRCiv 7.1(a)(3) and (b)(3),
12 the Court will reduce the amount of the requested fee award by 10%. Therefore,

13 IT IS ORDERED that plaintiff HeliQwest International, Inc.'s Application for
14 Entry of Default Judgment (Doc. 15) is granted to the extent that the plaintiff is
15 awarded the following relief:

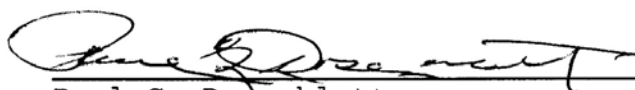
16 (1) Damages of \$241,139.21;

17 (2) Interest on the awarded damages at the applicable statutory rate pursuant
18 to 28 U.S.C. § 1961(a) from the date of judgment until the principal balance and all
19 accrued interest is paid in full; and

20 (3) Plaintiff's attorneys' fees and costs in the total amount of \$6,822.00.

21 IT IS FURTHER ORDERED that the Clerk of the Court shall enter judgment
22 accordingly.

23 DATED this 6th day of April, 2015.

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25 
26 Paul G. Rosenblatt
United States District Judge