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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Jennifer Rose,

10 Plaintiff,

11 v.

12 Medical Professional Management Group
13 LLC,

14 Defendant.

No. CV-18-01708-PHX-DLR

ORDER

15
16 Plaintiff Jennifer Rose moves for entry of default judgment against Defendant
17 Medical Professional Management Group LLC (“MPMG”) pursuant to Federal Rule of
18 Civil Procedure 55(b). (Doc. 29.) For reasons stated below, Plaintiff’s motion is granted.

19 **I. Background**

20 On June 5, 2018, Plaintiff filed this action, alleging violations of the Fair Labor
21 Standards Act (“FLSA”) and the Arizona Wage Act (“AWA”), as well as common law
22 claims for unjust enrichment and breach of the covenant of good faith and fair dealing.
23 (Doc. 1.) Plaintiff amended her complaint, adding claims of sexual harassment and
24 retaliation under the Arizona Civil Rights Act (“ACRA”). (Doc. 7.) MPMG was properly
25 served but failed to answer or otherwise defend within the time prescribed by the Federal
26 Rules of Civil Procedure. (Doc. 21.) Upon application by Plaintiff, the Clerk entered
27 default against MPMG. (Docs. 24, 27.) Plaintiff now seeks entry of a default judgment.
28 (Doc. 29.)

1 **II. Default Judgment Standard**

2 After default is entered by the clerk, the district court may enter default judgment
3 pursuant to Rule 55(b). The court’s “decision whether to enter a default judgment is a
4 discretionary one.” *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). Although the
5 court should consider and weigh relevant factors as part of the decision-making process, it
6 “is not required to make detailed findings of fact.” *Fair Housing of Marin v. Combs*, 285
7 F.3d 899, 906 (9th Cir. 2002).

8 The following factors may be considered in deciding whether default judgment is
9 appropriate: (1) the possibility of prejudice to the plaintiff, (2) the merits of the claims,
10 (3) the sufficiency of the complaint, (4) the amount of money at stake, (5) the possibility
11 of factual disputes, (6) whether default is due to excusable neglect, and (7) the policy
12 favoring decisions on the merits. See *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir.
13 1986). In considering the merits and sufficiency of the complaint, the court accepts as true
14 the complaint’s well-pled factual allegations, but the plaintiff must establish all damages
15 sought in the complaint. See *Geddes v. United Fin. Group*, 559 F.2d 557, 560 (9th Cir.
16 1977).

17 **A. Possible Prejudice to Plaintiff**

18 The first *Eitel* factor weighs in favor of default judgment. MPMG failed to respond
19 to the complaint or otherwise appear in this action despite being served with the complaint.
20 If default judgment is not granted, Plaintiff “will likely be without other recourse for
21 recovery.” *PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002).
22 The prejudice to MPMG in this regard supports the entry of default judgment.

23 **B. Merits of the Claims and Sufficiency of the Complaint**

24 The second and third *Eitel* factors favor default judgment where, as in this case, the
25 complaint sufficiently states plausible claims to relief under the pleading standards of Rule
26 8. See *id.* at 1175; *Danning v. Lavine*, 572 F.2d 1386, 1388-89 (9th Cir. 1978). A review
27 of the complaint’s well-pled allegations shows that Plaintiff has stated a plausible claim to
28 relief against MPMG.

1 **C. Amount of Money at Stake**

2 Under the fourth *Eitel* factor, the Court considers the amount of money at stake in
3 relation to the seriousness of the MPMG’s conduct. *See PepsiCo*, 238 F. Supp. 2d at 1176.
4 Plaintiff seeks \$8,760 in trebled damages for back wages, \$5,840 in liquidated damages for
5 violations of the FLSA and AWA, and \$20,000 for lost wages arising out of Plaintiff’s
6 sexual harassment and retaliation claims under the ACRA. (Doc. 29-1 at 2.) Plaintiff also
7 seeks \$16,283 in attorneys’ fees and costs. (*Id.*) MPMG violated the FLSA and AWA
8 when it knowingly failed to pay minimum wages due to Plaintiff, and it violated the ACRA
9 when it retaliated against Plaintiff for engaging in protected activity related to her
10 allegations of sexual harassment. This factor weighs in favor of a default judgment.

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

12 Given the sufficiency of the complaint and MPMG’s default, “no genuine dispute
13 of material facts would preclude granting Plaintiff’s motion.” *PepsiCo*, 238 F. Supp. 2d at
14 1177.

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

16 MPMG was properly served with process in this matter. (Doc. 21.) It therefore is
17 unlikely that MPMG’s default was a result of excusable neglect. *See Gemmel v.*
18 *Systemhouse, Inc.*, No. CIV 04-187-TUC-CKJ, 2008 WL 65604, at *5 (D. Ariz. Jan. 3,
19 2008). Thus, the sixth *Eitel* factor, like the other five discussed above, weighs in favor of
20 default judgment.

21 **F. Policy Favoring a Decision on the Merits**

22 The last factor always weighs against default judgment given that cases “should be
23 decided on their merits whenever reasonably possible.” *Eitel*, 782 F.2d at 1472. The mere
24 existence of Rule 55(b), however, “indicates that this preference, standing alone, is not
25 dispositive.” *PepsiCo*, 238 F. Supp. 2d at 1177 (citation omitted). Indeed, MPMG’s
26 failure to answer the complaint “makes a decision on the merits impractical, if not
27 impossible.” *Gemmel*, 2008 WL 65604, at *5. Stated differently, it is difficult to reach the
28 merits when the opposing party is absent. Because Plaintiff has asserted plausible claims

1 for relief to which MPMG has failed to respond, the policy encouraging decisions on the
2 merits does not weigh against the granting of default judgment in this case.

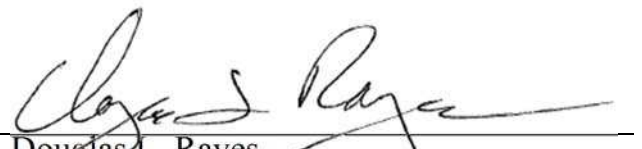
3 **III. Conclusion**

4 Having reviewed the record and considered the *Eitel* factors as a whole, the Court
5 concludes that the entry of default judgment against MPMG is appropriate
6 under Rule 55(b).

7 **IT IS ORDERED** that Plaintiff's motion for default judgment (Doc. 29) is
8 **GRANTED**. Pursuant to Federal Rule of Civil Procedure 55(b), the Clerk of Court shall
9 enter judgment in favor of Plaintiff and against MPMG in the amount of \$50,883.00.

10 **IT IS FURTHER ORDERED** that the Clerk of Court shall enter judgment in
11 accordance with this order and terminate this case.¹

12 Dated this 2nd day of April, 2019.

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17 Douglas L. Rayes
18 United States District Judge
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28 ¹ Because the Court granted Plaintiff's motion to reopen case with respect to MPMG
only on October 9, 2018 (Docs. 19-20), MPMG was the only remaining party to the action.