

1 **WO**

2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Raul Aguirre,

10 Plaintiff,

11 v.

12 Custom Image Pros LLC, et al.,

13 Defendants.
14

No. CV-23-00334-PHX-MTL

ORDER

15 Plaintiff Raul Aguirre (“Aguirre”) moves for default judgment against Defendants
16 Custom Image Pros LLC, Timothy Simpson, and Jane Doe Simpson (now known as Jamie
17 L. Simpson) (collectively, the “Defendants”), pursuant to Rule 55(b)(2) of the Federal
18 Rules of Civil Procedure. (Doc. 15.) For the following reasons, the Court grants the Motion
19 for Entry of Default Judgment (the “Motion”), and shall award Aguirre \$13,150 plus post-
20 judgment interest at the applicable statutory rate against Defendant Custom Image Pros
21 LLC, with \$6,460 of that amount to be held jointly and severally against all Defendants.¹

22 **I. BACKGROUND**

23 As the Clerk of Court has entered default (Doc. 11), the Court takes the Complaint’s
24 factual allegations as true. *See Geddes v. United Financial Group*, 559 F.2d 557, 560 (9th
25 Cir. 1977). (“The general rule of law is that upon default the factual allegations of the

26
27 ¹ Brigitte Maggio, a rising second-year law student at the Antonin Scalia Law School at
28 George Mason University, assisted in drafting this Order.

1 complaint, except those relating to the amount of damages, will be taken as true.”).

2 The Complaint alleges claims of failure to pay overtime and failure to pay minimum
3 wages in violation of the Fair Labor Standards Act (“FLSA”), failure to pay minimum
4 wages in violation of the Arizona Minimum Wage Act (“AMWA”), and failure to pay
5 wages due and owing in violation of the Arizona Wage Act (“AWA”). (Doc. 1 ¶¶ 91-113.)

6 On or around late-January 2023, Aguirre began working for Defendants as a manual
7 laborer. (*Id.* ¶ 33.) According to its website, Defendant Custom Image Pros LLC is an “all-
8 inclusive image marketing, design, and production company located in Phoenix, AZ.”
9 (*Id.* ¶ 12.) Aguirre’s primary duties included making luminous letters for signs, putting
10 lights on letters, and assembling letters for signs for Defendants. (*Id.* ¶ 34.) Defendants
11 agreed to pay Aguirre an hourly rate of \$25. (*Id.* ¶ 35.) Aguirre was treated as an employee,
12 as defined by the FLSA, 29 U.S.C. § 201 *et seq.* (*Id.* ¶ 39.) This was shown through:
13 Defendants’ controlling Aguirre’s schedule, Defendants having the exclusive right to hire
14 and fire Aguirre, Defendants’ supervision over Aguirre’s work and adherence to
15 Defendants’ rules when doing so, Defendants’ decision not to pay Aguirre overtime,
16 Aguirre’s lack of opportunity for profit or loss in the business, Aguirre’s lack of ability to
17 refuse work assigned to him, and Aguirre’s inability to work for other
18 companies. (*Id.* ¶¶ 40-42.)

19 Aguirre was hired as a permanent employee, generally working in excess of 40
20 hours per week for approximately three workweeks. (*Id.* ¶ 42(f).) Aguirre was assigned the
21 same hourly rate of pay, regardless of the number of hours worked in a workweek, and
22 regardless of whether he worked in excess of 40 hours in a workweek. (*Id.* ¶ 37.) During
23 his time working for Defendants, Aguirre worked approximately 50 hours per
24 week. (*Id.* ¶ 45.) Defendants paid Aguirre three times, via Zelle.² (*Id.* ¶¶ 46-49.) Beyond
25 the three payments totaling to that of \$950, Defendants did not pay Aguirre any additional

26
27 ² On or about January 27, 2023, Defendants paid Aguirre \$100 via Zelle. (Doc. 1 ¶¶ 46-
28 47.) On or about February 4, 2023, Defendants paid Aguirre \$250 via Zelle. (*Id.* ¶ 48.) On
or about February 11, 2023, Defendants paid Aguirre \$600 via Zelle. (*Id.* ¶ 49.)

1 wages for the duration of his employment. (*Id.* ¶ 50.) Throughout his employment with
2 Defendants, Aguirre continually reached out to Defendant Timothy Simpson asking when
3 he would be paid in full for the work he performed. (*Id.* ¶ 51.) Defendant Timothy Simpson
4 continually responded acknowledging that he owed Aguirre the money sought and stated
5 that he would pay Aguirre after receipt of additional funds from various projects. (*Id.* ¶ 52.)
6 After Aguirre continued to inquire Defendant Timothy Simpson regarding nonpayment of
7 wages due and owing, Simpson terminated Aguirre’s employment on or about February
8 17, 2023. (*Id.* ¶ 44.)

9 Aguirre filed this Complaint alleging FLSA, AMWA, and AWA claims. (*Id.* ¶¶ 91-
10 113.) Aguirre seeks monetary damages for the Workweeks 1-4 missing wages, federal and
11 state liquidated damages, as well as attorneys’ fees and costs. (*Id.* ¶¶ 1, 5, 88-90, 98 (A) –
12 (E), 103 (A) – (E), 108 (A) – (E), 113 (A) – (D)); (Doc. 15 at 4-9, 12-14.) In total, excluding
13 attorneys’ fees and costs and post-judgment augmentation, Aguirre is requesting \$13,150
14 against Custom Image Pros LLC, and of that \$13,150, against Defendants Custom Image
15 Pros LLC, Timothy Simpson, and Jamie L. Simpson in the amount of \$6,460, jointly and
16 severally. (Doc. 15 at 14.) Aguirre further requests that the Court allow him to file a motion
17 for attorneys’ fees and costs following the award of a default judgment. (*Id.*) Aguirre
18 requests that damages be augmented further by post-judgment interest pursuant to 28
19 U.S.C. § 1961. (*Id.*)

20 Despite being served with the Complaint and Summons (Docs. 7, 8, 9), Defendants
21 failed to file an answer, respond to the Complaint, or even file a notice of appearance.
22 Aguirre attempted to resolve this dispute outside of litigation by way of executing a
23 Settlement Agreement on April 4, 2023, but Defendants never paid Aguirre. (Doc. 15-2.)
24 Because Defendants failed to pay Aguirre by April 30, 2023, as agreed upon in the
25 Settlement Agreement, and have also failed to answer or otherwise respond to the
26 Complaint, Aguirre now moves for default judgment against Defendants.

27 **II. LEGAL STANDARD**

28 Federal Rule of Civil Procedure 55(a) provides that the Clerk of the Court must

1 enter a party's default "[w]hen a party against whom a judgment for affirmative relief is
2 sought has failed to plead or otherwise defend, and that failure is shown by affidavit or
3 otherwise." Fed. R. Civ. P. 55(a). Once a party has been defaulted, the court may enter a
4 default judgment. Fed. R. Civ. P. 55(b).

5 In determining whether to grant a default judgment, "[t]he general rule of law [is]
6 that upon default the factual allegations of the complaint, except those relating to the
7 amount of damages, will be taken as true." *Televideo Systems Inc. v. Heidenthal*, 826 F.2d
8 915, 917-18 (9th Cir. 1987).

9 While a plaintiff must prove damages when seeking a default judgment, this
10 evidentiary burden is "relatively lenient." *Elektra Entertainment Group v. Bryant*, 2004
11 WL 783123, at *2 (C.D. Cal. 2004). In determining damages, the Court may properly rely
12 on declarations submitted by the Plaintiff. Fed. R. Civ. P. 55(b)(2).

13 **III. JURISDICTION, VENUE, AND SERVICE**

14 "When entry of default is sought against a party who has failed to plead or otherwise
15 defend, a district court has an affirmative duty to look into its jurisdiction over both the
16 subject matter and the parties." *Tuli v. Republic of Iraq*, 172 F.3d 707, 712 (9th Cir. 1999).
17 Aguirre asserts claims arising under the FLSA, the AMWA, and the AWA. (Doc. 1 ¶¶ 91-
18 113.) This Court has subject matter jurisdiction over claims arising out of federal law,
19 including the FLSA, pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 201, *et seq.* This Court
20 also has subject matter jurisdiction pursuant 28 U.S.C. § 1367 because Aguirre's state law
21 claims, under both the AMWA and the AWA, are so related to his FLSA claim that the
22 Court has supplemental jurisdiction over them. Venue and personal jurisdiction
23 requirements are also satisfied because Custom Image Pros LLC "regularly conduct[s]
24 business in and [has] engaged in the wrongful conduct . . . in . . . this judicial district." (*Id.*
25 ¶ 9); 28 U.S.C. § 1391(b)(2).

26 Custom Image Pros LLC and its owners or managers, Timothy Simpson and Jamie
27 L. Simpson, regularly conduct business, have offices, and maintain business agents in
28 Arizona, and Aguirre is a resident of the state of Arizona. (*Id.* ¶¶ 10-11, 14.) Accordingly,

1 the Court has jurisdiction over the parties.

2 Timothy Simpson and Jamie L. Simpson were served with the Complaint and
3 Summons on March 1, 2023. (Docs. 8, 9.) Timothy Simpson is a registered statutory agent
4 for Custom Image Pros LLC and was served on its behalf on March 1, 2023. (Doc. 7.)

5 **IV. ANALYSIS**

6 Once a default is entered, the district court has discretion to grant default judgment.
7 See Fed. R. Civ. P. 55(b)(2); *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980); *Brooke*
8 *v. Sai Ashish Inc.*, 2021 WL 4804220, at *5 (E.D. Cal. 2021) (explaining that default
9 judgment “is a two-step process: an entry of default judgment must be preceded by an entry
10 of default”).

11 The following factors are to be considered when deciding whether default judgment
12 is appropriate:

13 (1) the possibility of prejudice to the plaintiff; (2) the merits of
14 the claim; (3) the sufficiency of the complaint; (4) the sum of
15 money at stake; (5) the possibility of a dispute concerning
16 material facts; (6) whether default was due to excusable
17 neglect; and (7) the strong policy underlying the Federal Rules
of Civil Procedure favoring a decision on the merits.

18 *Eitel v. McCool*, 782 F.2d 1470, 1471–72 (9th Cir. 1986); *New Gen, LLC v. Safe Cig, LLC*,
19 840 F.3d 606, 616 (9th Cir. 2016). As the party seeking default judgment, Aguirre “bears
20 the burden of demonstrating to the Court that the complaint is sufficient on its face and that
21 the *Eitel* factors weigh in favor of granting default judgment.” *Ronald Norris v. Shenzhen*
22 *IVPS Tech. Co.*, 2021 WL 4844116, at *2 (D. Ariz. Oct. 18, 2021). Aguirre also bears the
23 burden of proving all damages. *Philip Morris USA, Inc. v. Castworld Products, Inc.*, 219
24 F.R.D. 494, 498 (C.D. Cal. 2003).

25 **A. The First, Fifth, Sixth, and Seventh *Eitel* Factors**

26 In cases like this, in which the Defendants have not responded nor participated in
27 any litigation, the “first, fifth, sixth, and seventh [*Eitel*] factors are easily addressed.”
28 *Zekelman Industries Inc. v. Marker*, 2020 WL 1495210, at *3 (D. Ariz. 2020).

1 The first factor weighs in favor of default judgment because denying Aguirre’s
2 Motion will leave him “without other recourse for recovery.” *PepsiCo, Inc. v. California*
3 *Security Cans.*, 238 F.Supp.2d 1172, 1177 (C.D. Cal. 2002). Prejudice would exist if
4 Aguirre’s Motion were denied because he would lose the right to a “judicial resolution” of
5 his claims. *See generally Elektra Entertainment Group, Inc. v. Crawford*, 226 F.R.D. 388,
6 392 (C.D. Cal. 2005). Aguirre has also tried to settle this matter without success due to the
7 Defendants’ lack of action and payment on their part. (Doc. 15 at 10; Doc. 15-2.) Due to
8 Defendants’ failure to pay Aguirre’s minimum and overtime wages, or respond to
9 Aguirre’s Complaint, the only appropriate recourse Aguirre has is through litigation and
10 this Motion.

11 Next, the fifth factor weighs in favor of default judgment because the well-pleaded
12 factual allegations in the Complaint are taken as true, and there is no “genuine dispute of
13 material facts” that would preclude granting the Motion. *PepsiCo*, 238 F.Supp.2d at 1177.

14 Similarly, because Defendants were properly served (Docs. 7-9) and it is unlikely
15 that their failure to answer was due to excusable neglect, the sixth factor tips in favor of
16 entering default judgment. *See Twentieth Century Fox Film Corp. v. Streeter*, 438
17 F.Supp.2d 1065, 1071-1072 (D. Ariz. 2006).

18 The seventh factor—favoring decisions on the merits—generally weighs against
19 default judgment; however, “Rule 55(b) ‘indicates that this preference, standing alone, is
20 not dispositive.’” *PepsiCo*, 238 F.Supp.2d at 1177. This factor alone is not sufficient to
21 preclude the entry of default judgment in this case. *Warner Bros. Entertainment Inc. v.*
22 *Caridi*, 346 F.Supp.2d 1068, 1073 (C.D. Cal. 2004) (explaining that the seventh *Eitel* factor
23 “standing alone, cannot suffice to prevent entry of default judgment for otherwise default
24 judgment could never be entered” and Courts have concluded that “this factor does not
25 weigh very heavily.”) Defendants have been aware of the lawsuit since March 1, 2023, and
26 have had ample time to answer or respond, but have chosen not to participate. This factor
27 weighs neutral in granting default judgment.

28

1 **B. The Second and Third *Eitel* Factors**

2 The second and third *Eitel* factors—the merits of the claim and the sufficiency of
3 the complaint—are “often analyzed together and require courts to consider whether a
4 plaintiff has state[d] a claim on which [it] may recover.” *Vietnam Reform Party v. Viet Tan-*
5 *Vietnam Reform Party*, 416 F.Supp.3d 948, 962 (N.D. Cal. 2019). Before turning to
6 whether Aguirre has stated a claim on which he may recover, the Court must analyze
7 Aguirre’s employee status within the FLSA, the AMWA, and the AWA.

8 **i. FLSA Claims**

9 The FLSA defines an “employee” as “any individual employed by an employer.”
10 29 U.S.C. § 203(e)(1). It defines an “employer” as “any person acting directly or indirectly
11 in the interest of an employer in relation to an employee.” *Id.* § 203(d). The Court finds
12 Custom Image Pro LLC’s classification of Aguirre to be that of an
13 employee. (Doc. 1 ¶¶ 39-42, 79.) Custom Image Pros LLC had the authority to hire and
14 fire employees, supervised and controlled work schedules and the conditions of
15 employment, determined the rate and method of payment, and maintained employment
16 records in connection with Aguirre’s employment with Defendants. (*Id.* ¶ 13.) Custom
17 Image Pro LLC also directed and exercised control over Aguirre’s work and wages at all
18 relevant times. (*Id.* ¶¶ 26, 87.) These allegations, taken as true, support that Custom Image
19 Pro LLC was an employer of Aguirre.

20 Defendants Timothy Simpson and Jamie L. Simpson are also classified as
21 employers pursuant to the FLSA. (*Id.* ¶ 15.) Defendant Custom Image Pros LLC is subject
22 to liability under the FLSA and Defendants Timothy Simpson and Jamie L. Simpson are
23 subject to individual liability under the FLSA because they acted in the interest of
24 Defendants in relation to Custom Image Pros’ employees. (*Id.*) As owners or managers of
25 Custom Image Pros, Defendants Timothy Simpson and Jane Doe Simpson had the
26 authority to hire and fire employees, supervise and control work schedules or the conditions
27 of employment, determine the rate and method of payment, and maintain employment
28 records in connection with Aguirre’s employment with Defendants. (*Id.* ¶¶ 14-15.) The

1 Court finds that Custom Image Pro LLC is an employer and Aguirre was an employee of
2 Custom Image Pro LLC under the FLSA.

3 **ii. AMWA Claims**

4 The AMWA, like the FLSA, defines an “employee” as “any person who is or was
5 employed by an employer.” A.R.S. § 23-362(A). It defines an “employer” as “any
6 corporation proprietorship, partnership, joint venture, limited liability company, trust,
7 association, political subdivision of the state, individual or other entity acting directly or
8 indirectly in the interest of an employer in relation to an employee.” A.R.S. § 23-362(B).
9 As the AMWA shares the same definition of employee as the FLSA, the Court’s reasoning
10 as to Aguirre’s employee status under the FLSA applies here as well. Custom Image Pro
11 LLC is also an employer because it is an enterprise operating in Maricopa County, Arizona
12 that controlled Aguirre’s work and wages at all relevant times. (Doc. 1 ¶¶ 13, 31.) As a
13 result, the Court finds that Custom Image Pro LLC is an employer and Aguirre was an
14 employee of Custom Image Pro LLC under the AMWA.

15 **iii. AWA claims**

16 Like the FLSA and the AMWA, the AWA defines an “employee” as “any person
17 who performs services for an employer under a contract of employment either made in this
18 state or to be performed wholly or partly within this state.” A.R.S. § 23-350(2). The AWA
19 defines “employer” as “any individual, partnership, association, joint stock company, trust
20 or corporation, the administrator or executor of the estate of a deceased individual or the
21 receiver, trustee or successor of any of such persons employing any person.” A.R.S. § 23-
22 350(3). Additionally, Custom Image Pro LLC is also an employer because it is an
23 enterprise operating in Arizona that controlled Aguirre’s work and wages at all relevant
24 times. (Doc. 1 ¶¶ 13, 31.) Aguirre claims that while working for Custom Image Pro LLC
25 he resided in Arizona. (*Id.* ¶ 10.) For these reasons, Custom Image Pro LLC is an employer
26 and Aguirre is an employee under the AWA. (*Id.* ¶¶ 20, 22, 24, 25.)

27 Thus, the Court finds that Aguirre has properly stated a claim on which he can
28 recover, and the second and third *Eitel* factors weigh in favor of granting default judgment.

1 **C. The Fourth *Eitel* Factor**

2 Under the fourth *Eitel* factor, “the [C]ourt must consider the amount of money at
3 stake in relation to the seriousness of the Defendants’ conduct.” *See PepsiCo*, 238
4 F.Supp.2d at 1176 (C.D. Cal. 2002). Additionally, “[i]f the sum of money at stake is
5 completely disproportionate or inappropriate, default is disfavored.” *See Twentieth*
6 *Century Fox Film Corporation*, 438 F.Supp.2d at 1071 (D. Ariz. 2006).

7 Here, Aguirre seeks the unpaid minimum and overtime wages he is owed under the
8 FLSA, the AMWA, and the AWA along with liquidated damages. Aguirre is requesting
9 \$13,150 plus pre- and post-judgment interest pursuant to 28 U.S.C. § 1961, and to later
10 request attorneys’ fees and costs following the award of a default judgment. (Doc. 15 at
11 14.) Of this \$13,150 total, Aguirre is requesting that Defendant Custom Image Pros LLC
12 be liable for the entire amount, and all Defendants be jointly and severally liable for \$6,460.
13 (Doc. 15 at 13.) For the claims listed in the Complaint, the Court finds that the amount
14 requested is reasonable and not disproportionate or inappropriate. Accordingly, the fourth
15 *Eitel* factor favors the entry of default judgment.

16 **D. Damages**

17 Having found that entry of default judgment is appropriate, the Court must next
18 address “the ‘amount and character’ of relief to award.” *HTS, Inc. v. Boley*, 954 F.Supp.2d
19 927, 947 (D. Ariz. 2013) (referencing 10A Wright, Miller, & Kane, 2688 at 63); *See also*
20 *James v. Frame*, 6 F.3d 307, 310 (5th Cir.1993) (district court has “wide latitude” in
21 determining the amount of damages to award upon default judgment).

22 Aguirre requests \$13,150 in damages against Defendant Custom Image Pros LLC,
23 and of that \$13,150, an amount of \$6,460 against all Defendants, jointly and severally.
24 (Doc. 15 at 14.)

25 The total compensatory damages of \$13,150 Aguirre is seeking consists of: \$6,460,
26 which comprises of \$5,460³ in trebled unpaid minimum wage damages and \$1,000 in
27 liquidated unpaid overtime and \$6,690 in unpaid non-minimum wage and non-overtime

28 _____
³ The \$5,460 engulfs the \$1,475 in unpaid federal minimum wages. (Doc. 15 at 12.)

1 damages for workweeks 1-4. (*See* Doc. 15-1, ¶¶ 8-18); *see also* 29 U.S.C. § 216(b); A.R.S.
2 § 23-364. A.R.S. § 23-355.

3 Of this \$13,150 total, Aguirre is requesting that Defendant Custom Image Pros LLC
4 be liable for the entire amount, and all Defendants be jointly and severally liable for \$6,460.
5 (Doc. 15 at 13.) Additionally, Aguirre requests that the Court allow him to file a motion
6 for attorneys' fees and costs should the Court grant default judgment. (Doc. 15 at 13-14.)
7 Aguirre further requests that these amounts be augmented further by post-judgment interest
8 pursuant to 28 U.S.C. § 1961. (Doc. 15 at 14.)

9 Rule 54(c) requires that a default judgment “not differ in kind from, or exceed in
10 amount, what is demanded in the pleadings.” Fed. R. Civ. P. 54(c). Aguirre does not request
11 damages “different in kind” or in excess of those requested in his Complaint and his
12 Motion. (Doc. 1 ¶¶ 88-90, 98, 103, 108, 113.); (Doc. 15-1 ¶¶ 15-28.) Aguirre also provided
13 sufficient notice of the potential award through his Complaint, enabling Defendants “to
14 decide whether to respond to the complaint in the first instance.” *Fisher Printing Inc. v.*
15 *CRG LTD II LLC*, 2018 WL 603299, at *3 (D. Ariz. 2018).

16 The Court may enter a default judgment without a damages hearing when, as here,
17 “the amount claimed is a liquidated sum or capable of mathematical calculation.” *HTS,*
18 *Inc.*, 954 F.Supp.2d at 947 (quoting *Davis v. Fendler*, 650 F.2d 1154, 1161 (9th Cir. 1981)).
19 In this action, the requested damages are capable of mathematical calculation because they
20 are comprised of hours worked by Aguirre, the amount in pay he was entitled to receive,
21 and statutory multipliers. *See Million v. Pindernation Holdings LLC*, 2023 WL 2813684,
22 at *5 (D. Ariz. 2023.) The requested damages are also supported by Aguirre's Motion, his
23 Declaration, and other attached exhibits. (Docs. 15, 15-1, 15-2); *see Doe v. United States*,
24 2018 WL 2431774, at *8 (D. Ariz. 2018) (“In determining damages, a court can rely on
25 declarations submitted by the plaintiff[.]”) (citing *Philip Morris USA, Inc.*, 219 F.R.D. at
26 498)).

27 The Court finds that Aguirre has sufficiently established the requested damages.
28 (Docs. 15, 15-1, 15-2.) Therefore, the Court will enter default judgment in the amount of

1 \$13,150 against Defendant Custom Image Pros LLC plus post-judgment interest, with
2 \$6,460 of that amount being held jointly and severally against all Defendants. Additionally,
3 post-judgment interest will be added to this award. Should Aguirre seek attorneys' fees and
4 costs, he shall file his fee application with the Court.⁴

5 **V. CONCLUSION**

6 Accordingly,

7 **IT IS ORDERED** granting the Motion for Entry of Default Judgment (Doc. 15.)

8 **IT IS FURTHER ORDERED** awarding Raul Aguirre \$13,150 plus post-judgment
9 interest at the applicable statutory rate against Defendant Custom Image Pros LLC, with
10 \$6,460 of that amount to be held jointly and severally against all Defendants, Custom
11 Image Pros LLC, Timothy Simpson, and Jamie L. Simpson.

12 **IT IS FINALLY ORDERED** directing the Clerk of the Court to close this action
13 and to enter judgment accordingly.

14 Dated this 26th day of June, 2023.

15
16 

17 _____
18 Michael T. Liburdi
19 United States District Judge
20
21
22
23
24
25
26
27

28 _____
⁴ Following this award of default judgment, the Court will allow Plaintiff to move for reasonable attorneys' fees pursuant to Local Rule of Civil Procedure 54.2.