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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Francisco Aguirre,

10 Plaintiff,

11 v.

12 Custom Image Pros LLC, et al.,

13 Defendants.  
14

No. CV-23-00419-PHX-ROS

**ORDER**

15 Plaintiff has filed a Motion for Default Judgment against Defendants. (Doc. 12).  
16 Defendants have not filed a response. For the following reasons, the Court will grant the  
17 Motion and direct entry of default judgment against Defendant Custom Image Pro LLC in  
18 the amount of \$2,341.50 and against Defendants Custom Image Pros LLC, Timothy  
19 Simpson, and Jane Doe Simpson, jointly and severally, in the amount of \$2,908.50.

20 **BACKGROUND**

21 Plaintiff filed this action for the recovery of unpaid minimum wages under the Fair  
22 Labor Standards Act (“FLSA”), the Arizona Minimum Wage Act (“AMWA”), and the  
23 Arizona Wage Act (“AWA”) on March 9, 2023. (Doc. 1, “Compl.”). Defendants are an  
24 Arizona image marketing, design, and production company and two individuals alleged to  
25 be owners and managers thereof. *Id.* at ¶¶ 12, 14. Plaintiff asserts Defendants misclassified  
26 him as an independent contractor and did not pay him any wages during his three-week  
27 employment with Defendants as a laborer. *Id.* at ¶¶ 35-45. Defendants Custom Image Pros  
28 LLC and Timothy Simpson were served on June 6, 2023, (Docs. 7 and 8) and Defendant

1 Jamie Simpson was served on October 18, 2023 (Doc. 14). Defendants did not file an  
2 answer or otherwise participate in the action. On June 26, 2023, default was entered against  
3 Defendants pursuant to Fed. R. Civ. P. 55(a).<sup>1</sup> (Doc. 11). On July 10, 2023, Plaintiff filed  
4 a motion for default judgment pursuant to Fed. R. Civ. P. 55(b)(2). (Doc. 12, “Mot.”).

### 5 JURISDICTION

6 When a party seeks default judgment “against a party who has failed to plead or  
7 otherwise defend, a district court has an affirmative duty to look into its jurisdiction over  
8 both the subject matter and the parties.” *In re Tuli*, 172 F.3d 707, 712 (9th Cir. 1999).  
9 Because Plaintiff’s Complaint invokes a federal cause of action under the FLSA, the Court  
10 has subject matter jurisdiction over Count One. *See* 28 U.S.C. § 1331. The Court has  
11 supplemental jurisdiction over the Arizona state law claims, Counts Two and Three,  
12 because they are “part of the same case or controversy” as Plaintiff’s federal law claim.  
13 28 U.S.C. § 1367(a). The Court also has personal jurisdiction over Defendants. Plaintiff’s  
14 claims arise from Defendants’ business activities in Arizona and their alleged failure to  
15 comply with federal and state employment laws during those activities. Compl. at  
16 ¶¶ 10-75; *Picot v. Weston*, 780 F.3d 1206, 1211 (9th Cir. 2015).

### 17 DEFAULT JUDGMENT

18 Once default is entered, the Court may enter default judgment under Rule 55(b).  
19 Deciding to grant default judgment is discretionary and the Court must consider: (1) the  
20 possibility of prejudice to the plaintiff; (2) the merits of plaintiff’s substantive claim; (3)  
21 the sufficiency of the complaint; (4) the amount in controversy; (5) the possibility of factual  
22 dispute; (6) whether the default was due to excusable neglect; and (7) the strong preference  
23 to decide cases on the merits. *Eitel v. McCool*, 782 F.2d 1470, 1472 (9th Cir. 1986).

#### 24 A. Possible Prejudice to Plaintiffs

25 Continuation of this action despite Defendants’ failure to answer or otherwise  
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27 <sup>1</sup> The Clerk’s June 26, 2023 entry of default against “Jane Doe Simpson” (Doc. 11) will be construed as  
28 being entered against Defendant Jamie L. Simpson following Plaintiff’s amendment of the Complaint  
substituting Defendant’s real name (Doc. 15) and properly executed service against Defendant Jamie L.  
Simpson on October 18, 2023 (Doc. 14).

1 participate would prejudice Plaintiff by precluding a judicial resolution of his claims. This  
2 factor weighs in favor of granting default judgment. *See Constr. Laborers Tr. Funds for*  
3 *S. California Admin. Co. v. Anzalone Masonry, Inc.*, 316 F. Supp. 3d 1192, 1198 (C.D.  
4 Cal. 2018).

5 **B. Merits of the Claim and Sufficiency of the Complaint**

6 The second and third *Eitel* factors, taken together, require courts to consider whether  
7 a plaintiff has stated a claim on which they may recover. *See PepsiCo, Inc. v. Cal. Sec.*  
8 *Cans*, 238 F. Supp. 2d 1172, 1175 (C.D. Cal. 2002); *Danning v. Lavine*, 572 F.2d 1386,  
9 1388-89 (9th Cir. 1978). In considering these factors, the complaint’s factual allegations  
10 are taken as true, but the plaintiff must establish all damages sought. *Geddes v. United*  
11 *Fin. Group*, 559 F.2d 557, 560 (9th Cir. 1977).

12 To bring a claim under the FLSA, a plaintiff must allege he was not paid applicable  
13 minimum wages. *Landers v. Quality Commc’ns, Inc.*, 771 F.3d 638, 646 (9th Cir. 2014);  
14 *see also* 29 U.S.C. § 206(a). An employee can be covered under the FLSA through  
15 (i) enterprise coverage if the employer has annual gross sales or business done greater than  
16 \$500,000; or (ii) individual coverage if the employee is “engaged in commerce or in the  
17 production of goods for commerce.” 29 U.S.C. §§ 203(s)(1)(A), 206(b); *see also Zorich*  
18 *v. Long Beach Fire Dep’t & Ambulance Serv., Inc.*, 118 F.3d 682, 686 (9th Cir. 1997). An  
19 individual can be subject to liability under the FLSA when she “exercises control over the  
20 nature and structure of the employment relationship, or economic control over the  
21 relationship.” *Boucher v. Shaw*, 572 F.3d 1087, 1091 (9th Cir. 2009). To bring a claim  
22 under the AMWA, a plaintiff must allege he was not paid the applicable minimum wage  
23 for hours worked. A.R.S. § 23-363(A). To bring a claim under the AWA, a plaintiff must  
24 allege the Defendant failed to pay wages due to the plaintiff. A.R.S. § 23-355.

25 Plaintiff has alleged he “worked approximately 70 hours” over “approximately three  
26 workweeks working for Defendants” and was paid “no wages whatsoever for the entire  
27 duration of his employment.” Compl. at ¶¶ 43-45. Plaintiff also alleges Defendants’  
28 enterprise “had annual gross sales of at least \$500,000” and he, “in his work for Defendants,

1 was engaged in interstate commerce.” *Id.* at ¶¶ 27-30. Plaintiff also alleges he was an  
2 employee of Defendants and Defendants were his employers as defined by  
3 A.R.S. § 23-362. *Id.* at ¶¶ 24-25. Finally, Plaintiff alleges the individual Defendants—  
4 Timothy Simpson and Jane Doe Simpson—are owners and managers for Defendant  
5 Custom Image Pros LLC, had the authority to hire and fire employees, supervised and  
6 controlled work schedules, determined the rate and method of payment, and ran maintained  
7 employment records in connection with Plaintiff’s employment with Defendants. *Id.* at  
8 ¶¶ 14-15.

9 Because Plaintiff’s well-pled factual allegations must be taken as true, Plaintiff has  
10 stated a plausible claim for relief against all three Defendants under the FLSA and AMWA,  
11 and against Defendant Custom Image Pros LLC under the AWA. These factors support  
12 entering default judgment.

13 **C. Amount in Controversy**

14 This factor requires the court to consider the amount of money at stake in relation  
15 to the seriousness of Defendants’ conduct. *PepsiCo*, 238 F. Supp. 2d at 1176. Plaintiff  
16 seeks \$5,250 in liquidated unpaid wages under A.R.S. § 23-355. Mot. at 9. This requested  
17 amount is not high and is reasonable and proportional to Defendants’ failure to pay  
18 applicable minimum wages under federal and state law. This factor supports entering  
19 default judgment.

20 **D. Dispute Over Material Facts**

21 No genuine dispute of material facts prevents granting Plaintiff’s motion given the  
22 sufficiency of Plaintiff’s complaint and Defendants’ default. *See PepsiCo*, 238 F. Supp.  
23 2d at 1177. This factor supports entering default judgment.

24 **E. Excusable Neglect**

25 Plaintiff executed proper service against all Defendants in this action, (Docs. 7, 8,  
26 and 9), and there is nothing indicating Defendants’ failure to answer is due to excusable  
27 neglect. This factor supports entering default judgment.  
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1 AMWA, plus statutory trebling of damages for a total of \$2,908.50; and \$1,750  
2 (70 hours \* \$25) in unpaid wages under the AWA, plus statutory trebling of damages for a  
3 total of \$5,250. Plaintiff does not seek to stack these damages, instead stating the smaller  
4 awards are “engulfed” by the larger awards and seeks only \$5,250 in total damages. *Id.* at  
5 ¶ 18. But because only Defendant Custom Image Pros LLC is liable for damages under  
6 the AWA, Plaintiff asserts all three Defendants are jointly and severally liable for his  
7 unpaid minimum wage damages under the AMWA equal to \$2,908.50.

8 Since the damages sought by Plaintiff are provided for by statute and Plaintiff’s  
9 affidavit is sufficiently detailed to permit the requisite statutory calculations, the Court will  
10 grant Plaintiff’s requested damages, including a joint and several award against all three  
11 Defendants on the FLSA and AMWA claims in the amount of the greater AMWA claim  
12 of \$2,908.50, and against Defendant Custom Image Pros LLC only on the difference  
13 between the larger AWA award and the AMWA award, or \$2,341.50  
14 (\$5,250.00 - \$2,908.50). The Court will also award post-judgment interest at the  
15 applicable federal rate pursuant to 28 U.S.C. § 1961(a). The Court defers an award of  
16 attorneys’ fees pending the filing of a motion in accordance with Local Rule of Civil  
17 Procedure 54.2.

18 Accordingly,

19 **IT IS ORDERED** Plaintiff’s Motion for Default Judgment (Doc. 12) is  
20 **GRANTED**. The Clerk of Court is directed to enter judgment in favor of Plaintiff and  
21 against Defendants Custom Image Pros LLC, Timothy Simpson, and Jane Doe Simpson,  
22 jointly and severally, in the amount of \$2,908.50 in damages and liquidated damages under  
23 the FLSA and the AMWA. The Clerk of Court is also directed to enter judgment in favor  
24 of Plaintiff and against Defendant Custom Image Pro LLC in the amount of \$2,341.50 in  
25 damages and liquidated damages under the AWA. These amounts shall be subject to post-  
26 judgment interest at the applicable federal rate pursuant to 28 U.S.C. § 1961(a).

27 **IT IS FURTHER ORDERED** Plaintiff may file a motion for reasonable attorneys’  
28 fees and costs in accordance with Local Rule of Civil Procedure 54.2.

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**IT IS FURTHER ORDERED** the Clerk of Court shall close this case.

Dated this 15th day of November, 2023.



Honorable Roslyn O. Silver  
Senior United States District Judge