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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Christian Delgado,

10 Plaintiff,

11 v.

12 Fast Wireless LLC, et al.,

13 Defendants.
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No. CV-24-00203-PHX-JAT

ORDER

15 Pending before the Court is Plaintiff Christian Delgado's ("Plaintiff") Motion for
16 Default Judgment against Defendants Fast Wireless LLC, Jorge Rosello, and Jane Doe
17 Rosello (collectively "Defendants"). (Doc. 26). The Court now rules on the motion.

18 **I. BACKGROUND**

19 On February 1, 2024, Plaintiff filed an amended complaint against Defendants.
20 (Doc. 6). Plaintiff alleges Defendants failed to pay overtime wages, minimum wages, and
21 wages due. (*See generally* Doc. 6). Defendants failed to file an answer or response. Upon
22 Plaintiff's application, the Clerk of the Court entered default against Defendants on March
23 21, 2024. (Doc. 20). On April 12, 2024, Plaintiff filed a Motion for Default Judgment.
24 (Doc. 21). The Court denied this motion without prejudice, citing concerns with service of
25 process and the fact that Plaintiff did not seek default against two defendants named in the
26 amended complaint. (Doc. 22 at 1-2). The Court ordered Plaintiff to show cause on the
27 service of process issue. (Doc. 22 at 3). Plaintiff voluntarily dismissed its claims against
28 Defendants Jorge Blakely and Jane Doe Blakely. (Doc. 23). Plaintiff then filed a Response

1 to the Court’s Order to Show Cause, (Doc. 24), and the Court deemed cause to have been
2 shown, (Doc. 25). Pending before the Court is Plaintiff’s Motion for Default Judgment as
3 to Fast Wireless LLC, Jorge Rosello, and Jane Doe Rosello.¹ (Doc. 26).

4 II. DEFAULT JUDGMENT

5 Once the Clerk has entered default, a court may, but is not required to, grant default
6 judgment under Rule 55(b) on amounts that are not for a sum certain. *Aldabe v. Aldabe*,
7 616 F.2d 1089, 1092 (9th Cir. 1980) (per curiam). In considering whether to enter default
8 judgment, a court may consider the following factors:

9 (1) The possibility of prejudice to the plaintiff, (2) the merits of plaintiff’s
10 substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at stake
11 in the action; (5) the possibility of a dispute concerning material facts; (6) whether
12 the default was due to excusable neglect, and (7) the strong policy underlying the
13 Federal Rules of Civil Procedure favoring decisions on the merits.

14 *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986). When considering these factors,
15 a defendant is deemed to have admitted all well-pleaded allegations in the complaint but
16 does not admit allegations related to damages or those that do no more than “parrot” the
17 elements of a claim. *DirecTV, Inc. v. Hoa Huynh*, 503 F.3d 847, 854 (9th Cir. 2007). Upon
18 consideration of the *Eitel* factors, the Court concludes that entry of default judgment
19 against Defendants is proper.

20 a. Possibility of Prejudice

21 A possibility of prejudice exists when the failure to enter default judgment denies a
22 plaintiff judicial resolution of the claims presented or leaves him without other recourse
23 for recovery. *Elektra Entm’t Grp., Inc. v. Crawford*, 226 F.R.D. 388, 392 (C.D. Cal. 2005).
24 Plaintiff worked as a sales representative for Defendants for approximately eight weeks
25 and Defendants failed to pay Plaintiff minimum and overtime wages. (Doc. 26-1 at 2-3).
26 Plaintiff served all remaining Defendants. (Doc. 11, 12, 13). Defendants’ failure to pay and
27 failure to respond makes it likely Plaintiff will be left without recourse if default judgment
28 is not granted. Therefore, this factor weighs in favor of granting the motion.

¹ As the Court warned in its previous Order, the Court “does not believe a judgment can be collected against a fictitious party.” See *Peralta v. Custom Image Pros LLC et al.*, No. CV-23-00358-PHX-JAT, 2023 WL 8455120, at *5 n.3 (D. Ariz. 2023 Dec. 6, 2023).

1 **b. Merits of Plaintiff’s Substantive Claim and Sufficiency of Complaint**

2 “The second and third *Eitel* factors address the substantive merits of the claim and
3 the sufficiency of the complaint and are often analyzed together.” *Joe Hand Promotions,*
4 *Inc. v. Garcia Pacheco*, No. 18-cv-1973-BAS-KSC, 2019 WL 2232957, at *2 (S.D. Cal.
5 May 23, 2019). The Ninth Circuit has suggested that these two factors favor entering
6 judgment when a plaintiff has “state[d] a claim on which the [plaintiff] may recover.”
7 *PepsiCo, Inc. v. California Sec. Cans*, 238 F. Supp. 2d 1172, 1175 (C.D. Cal. 2002) (citing
8 *Danning v. Lavine*, 572 F.2d 1386, 1388 (9th Cir. 1978)).

9 Count One of Plaintiff’s complaint claims that Defendants failed to pay overtime
10 wages in violation of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201-219. (Doc.
11 6 at 11-13). To succeed on this claim, “Plaintiff must prove that (a) [Plaintiff] was engaged
12 in commerce or in the production of goods for commerce, and that (b) Defendants failed
13 to pay [Plaintiff] an overtime wage.” *Suarez v. IPVision Inc.*, No. CV-24-00118-TUC-
14 AMM, 2024 WL 4680584, at *3 (D. Ariz. Nov. 5, 2024) (citing 29 U.S.C. § 207(a)(1)).
15 Count Two of Plaintiff’s complaint claims that Defendants failed to pay minimum wage
16 under the FLSA. (Doc. 6 at 13-14). To succeed on this claim, “Plaintiff must prove that (a)
17 [Plaintiff] was engaged in commerce or in the production of goods for commerce, and that
18 (b) Defendants failed to pay [Plaintiff] the federal minimum wage.” *Suarez*, 2024 WL
19 4680584, at *3. Count Three of Plaintiff’s complaint claims that Defendants failed to pay
20 minimum wage under the Arizona Minimum Wage Act (“AMWA”), Ariz. Rev. Stat. § 23-
21 363. (Doc. 6 at 14-16). To succeed on this claim, “Plaintiff must prove that Defendants did
22 not pay [Plaintiff] the minimum wage as required under the AMWA.” *Suarez*, 2024 WL
23 4680584, at *3 (citing Ariz. Rev. Stat. § 23-363(A)). Finally, Count Four of Plaintiff’s
24 complaint claims Defendants failed to pay wages due and owed under the Arizona Wage
25 Act (“AWA”), Ariz. Rev. Stat. § 23-351. (Doc. 6 at 16-17). To succeed on this claim,
26 “Plaintiff must prove that Defendants did not timely pay all wages due as required under
27 the AWA.” *Suarez*, 2024 WL 4680584, at *3 (citing Ariz. Rev. Stat. §§ 23-351(A), (C)).

28 In the complaint, Plaintiff alleges that she was “engaged in commerce” while

1 working as a sales representative for Defendants, who “own and operate a Metro PCS
2 franchise store location.”² (Doc. 6 at 6-7). Defendants classified Plaintiff as an independent
3 contractor, but Plaintiff makes specific allegations regarding this “misclassification” and
4 alleges that “Plaintiff was actually an employee, as defined by the FLSA.” (Doc. 6 at 8).

5 Although “Plaintiff does not have complete time or pay records in [Plaintiff’s]
6 possession,” Plaintiff estimates that “[s]he worked approximately 50 hours per week.”
7 (Doc. 6 at 8; Doc. 26 at 5; Doc. 26-1 at 3). Plaintiff alleges that “[a]t all relevant times,
8 Defendants did not pay Plaintiff one and one-half times her regular rate of pay for time
9 spent working in excess of 40 hours in a given workweek” and that “[s]he was not paid any
10 wage whatsoever for her final two workweeks.” (Doc. 6 at 8-10; Doc 26 at 5; Doc. 26-1 at
11 3). Taken as true, Plaintiff’s allegations are sufficient to establish claims against
12 Defendants for failure to pay overtime and minimum wages under the FLSA, AMWA, and
13 AWA. Accordingly, the second and third *Eitel* factors favor entry of default judgment.

14 **c. The Amount of Money at Stake**

15 “Under the fourth *Eitel* factor, the Court considers the amount of money at stake in
16 relation to the seriousness of [a defendant’s] conduct.” *Bankers Ins. Co. v. Old W. Bonding*
17 *Co.*, No. CV11-1804 PHX DGC, 2012 WL 2912912, at *2 (D. Ariz. July 16, 2012). If the
18 sum of money at stake is completely disproportionate or inappropriate, default judgment is
19 disfavored. *See Twentieth Century Fox Film Corp. v. Streeter*, 438 F. Supp. 2d 1065, 1071
20 (D. Ariz. 2006). A district court has “wide latitude” in determining the amount of damages
21 to award upon default judgment. *James v. Frame*, 6 F.3d 307, 310 (9th Cir. 1993).

22 Here, Plaintiff seeks damages pursuant to the FLSA, AMWA, and AWA. (*See*
23 *generally* Doc. 26). Plaintiff requests damages in the total amount of \$5,643.80, plus post-
24 judgment interest. (Doc. 26 at 10). The Court finds that the stated damages are not
25 unreasonable or inappropriate. Accordingly, this factor weighs in favor of entering default
26 judgment.

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² The Court is unclear why Plaintiff’s complaint elsewhere describes Defendants’ business
as “a residential painting company.” (Doc. 6 at 7).

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d. Possibility of Disputed Material Facts

In analyzing the fifth *Eitel* factor, the Court considers the likelihood of a dispute concerning material facts. *Eitel*, 782 F.2d at 1471-72. Considering both the allegations, now deemed admitted, and Plaintiff’s declaration, “no genuine dispute of material facts would preclude granting Plaintiff’s motion.” *See PepsiCo., Inc.*, 238 F. Supp. 2d at 1177. Thus, this factor weighs in favor of granting the motion.

e. Excusable Neglect

In the sixth *Eitel* factor, the Court evaluates whether the Defendants’ failure to answer or defend is due to excusable neglect. *See Eitel*, 782 F.2d at 1472. On this record, little possibility exists that Defendants’ default resulted from excusable neglect because remaining Defendants were duly served.³ (Doc. 11, 12, 13). Further, no other facts indicate that default is attributable to excusable neglect. Consequently, this factor weighs in favor of granting the motion.

f. Policy Favoring Decisions on the Merits

Although it is true that “[c]ases should be decided upon their merits whenever reasonably possible,” *Eitel*, 782 F.2d at 1472, that is made “impractical, if not impossible,” when a defendant fails to answer, *PepsiCo., Inc.*, 238 F. Supp. 2d at 1177. “Under Fed. R. Civ. P. 55(a), termination of a case before hearing the merits is allowed whenever a defendant fails to defend an action.” *Id.* Here, Defendants have not answered or otherwise appeared in this case. (*See* Doc. 22). Thus, this factor does not preclude entering default judgment against Defendants.

g. Conclusion

On balance, the *Eitel* factors weigh in favor of granting Plaintiff’s motion for default judgment. Having concluded that entry of default judgment is appropriate under the circumstances, the Court will now turn to evaluate Plaintiff’s request for damages in the amount of \$5,643.80 plus post-judgment interest.

³ According to Plaintiff, “Defendant [Jorge Rosello] hired counsel to apparently try to negotiate a settlement. When that did not work, Mr. Rosello attempted to negotiate a settlement himself. Those efforts were not fruitful, and Defendant Jorge Rosello has continued to not participate in this matter.” (Doc. 26 at 7).

1 **III. DAMAGES**

2 The relevant statutes provide for damages as follows:

3 The FLSA provides a cause of action for an employee to recover from his employer
4 any unpaid minimum wages, unpaid overtime compensation, and “an additional
5 equal amount as liquidated damages.” *See* 29 U.S.C. § 216(b). For overtime
6 compensation, an employee who works in excess of forty hours in a workweek
7 should receive “compensation . . . at a rate not less than one and one-half times the
8 regular rate at which he is employed.” *Id.* § 207(a)(2)(C).

9 The AMWA requires employers to pay their employees at least minimum wage and
10 provides for employees to recover from their employers any unpaid minimum wages
11 plus “an additional amount equal to twice the underpaid wages” Ariz. Rev.
12 Stat. § 23-364(G).

13 The AWA requires employers to pay their employees all due wages within a
14 specified period of time and provides for the employee to recover “an amount that
15 is treble the amount of the unpaid wages.” Ariz. Rev. Stat. § 23-355(A).

16 *Suarez*, 2024 WL 4680584, at *4.

17 **a. Unpaid Minimum Wages**

18 Under the FLSA, Plaintiff calculated unpaid minimum wage damages of \$1,450.⁴
19 (Doc. 26 at 9). The FLSA amount is “engulfed” by Plaintiff’s unpaid minimum wage
20 damages under the AMWA; under the AMWA, Plaintiff calculated damages of \$2,870.⁵
21 (Doc. 26 at 9). The AMWA amount is “engulfed” by Plaintiff’s unpaid minimum wage
22 damages under the AWA; under the AWA, Plaintiff calculated damages of \$4,455.⁶ (Doc.
23 26 at 10). Thus, the total amount of damages in the form of unpaid minimum wages is

24 ⁴ “During each of the final two workweeks of her employment with Defendants, Plaintiff
25 worked approximately 50 hours, for a total of approximately 100 hours. At 100 hours,
26 Plaintiff’s unpaid federal minimum wages for those weeks are \$725 ($\$7.25 * 100$).” (Doc.
27 26 at 6 (internal citations removed)). Plaintiff then took \$725 and multiplied it by two to
28 get the “additional equal amount as liquidated damages.” 29 U.S.C. § 216(b). Total =
29 \$1,450.

30 ⁵ “During each of the final two workweeks of her employment with Defendants, Plaintiff
31 worked approximately 50 hours, for a total of approximately 100 hours. . . . At 100 hours,
32 Plaintiff’s unpaid Arizona minimum wages for [the final two workweeks] are \$1,435
33 ($\$14.35 * 100$).” (Doc. 26 at 6). Plaintiff then took \$1,435 in and multiplied it by two to
34 get the “additional amount equal to twice the underpaid wages.” Ariz. Rev. Stat. § 23-
35 364(G). Total = \$2,870.

36 ⁶ “Plaintiff’s agreed-upon rate of pay was approximately \$14.85 per hour.” (Doc. 26 at 6;
37 Doc. 26-1 at 3). At 100 hours (50 hours for each of the final two workweeks), Plaintiff’s
38 unpaid wages are \$1,485 ($\$14.85 * 100$ hours). (Doc. 26 at 5). Plaintiff then took \$1,485
39 and trebled it to \$4,455 under A.R.S. § 23-355.

1 \$4,455.

2 **b. Unpaid Overtime Compensation**

3 Under the FLSA, Plaintiff calculated unpaid overtime compensation of \$1,188.50.⁷
4 (Doc. 26 at 10).

5 **c. Total Damages**

6 Plaintiff has sufficiently established that “Plaintiff should be awarded total damages
7 in the amount of \$5,643.80. This amount consists of \$4,455 in trebled unpaid wages and
8 \$1,188.80 in liquidated (doubled) unpaid overtime.” (Doc. 26 at 10). Accordingly, the
9 Court finds the requested damages award plus post-judgment interest appropriate.

10 **IV. ATTORNEYS’ FEES**

11 Plaintiff states that she intends to file a motion for attorneys’ fees and costs, should
12 the Court grant default judgment. (Doc. 26 at 11). Following this award of Default
13 Judgment, the Court will allow Plaintiff to move for reasonable attorneys’ fees pursuant to
14 Local Rule of Civil Procedure 54.2. Plaintiff must cite the applicable legal authority upon
15 which she seeks the award of attorneys’ fees.

16 **V. CONCLUSION**

17 Based on the foregoing,

18 **IT IS ORDERED** the Plaintiff’s motion for default judgment, (Doc. 26), is
19 **GRANTED**. The Clerk of the Court shall enter judgment against Fast Wireless LLC in the
20 amount of \$150 plus post-judgment interest at the applicable statutory rate.⁸ The Clerk of
21 the Court shall also enter judgment against Fast Wireless LLC, and Jorge Rosello and Jane
22 Doe Rosello, jointly and severally in the amount of \$5,493.80, plus post-judgment interest
23 at the applicable statutory rate.

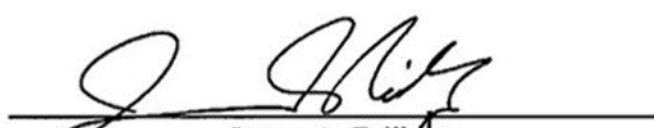
24 _____
25 ⁷ “Plaintiff conservatively estimates that she worked 50 hours per week for [eight
26 workweeks].” (Doc. 26 at 6). At 10 hours overtime per week for eight weeks, Plaintiff
27 worked approximately 80 overtime hours “that should have included an overtime premium
28 of \$7.43 (one-half her regular rate of \$14.85).” (Doc. 26 at 6). Her unpaid overtime
damages are therefore \$594.40 (80 hours * \$7.43). Plaintiff then took \$594.40 in unpaid
overtime compensation and multiplied it by two to get the “additional equal amount as
liquidated damages.” 29 U.S.C. § 216(b). Total = \$1,188.80.

⁸ Plaintiff stipulates that this portion of the judgment is collectable only against the
employer.

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IT IS FURTHER ORDERED that Plaintiff may submit a motion for attorneys' fees as specified above within 14 days of the date of this order; a bill of costs may also be filed at that time in accordance with Local Rule of Civil Procedure 54.1.

Dated this 22nd day of November, 2024.


James A. Teilborg
Senior United States District Judge