

1 559 F.2d 557, 560 (9th Cir. 1977)). Plaintiffs' complaint alleges violations of the Fair Debt
2 Collection Practices Act (FDCPA), 15 U.S.C. § 1692 *et seq.* The allegations taken as true
3 establish that Defendant constantly and continuously placed an average of four calls per day
4 to Plaintiffs demanding payment of an alleged debt, and Defendant used intimidating and
5 abusive language. Defendant contacted Plaintiffs' family members multiple times, despite
6 requests to stop, informing them that they were attempting to collect a debt. This conduct
7 as pled violated multiple provisions of the FDCPA, including 15 U.S.C. §§ 1692b(1),
8 1692b(2), 1692b(3), 1692d, 1692d(5), 1692d(6), 1692e(11) and 1692f. As a result of
9 Defendant's conduct, Plaintiffs suffered emotional distress, in the form of sleeplessness; fear
10 of answering the phone and door; nervousness; embarrassment in talking to family and
11 friends; depression; feeling hopeless, pessimistic, guilty, worthless and helpless; changes in
12 appetite; restlessness or irritability; headaches, nausea, chronic pain or fatigue; and negative
13 impacts on work and relationships. In the complaint, Plaintiffs prayed for a declaratory
14 judgment, statutory damages, actual damages, and attorney's fees and costs. (Dkt. 1 at 4-5.)

15 "The district court's decision whether to enter a default judgment is a discretionary
16 one." *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). Factors that a court may
17 consider in exercising that discretion include: "(1) the possibility of prejudice to the plaintiff,
18 (2) the merits of plaintiff's substantive claim, (3) the sufficiency of the complaint, (4) the
19 sum of money at stake in the action, (5) the possibility of a dispute concerning material facts,
20 (6) whether the default was due to excusable neglect, and (7) the strong policy underlying
21 the Federal Rules of Civil Procedure favoring decisions on the merits." *Eitel v. McCool*, 782
22 F.2d 1470, 1471-72 (9th Cir. 1986) (citing 6 James Wm. Moore et al., *Moore's Federal*
23 *Practice* ¶ 55-05[2], at 55-24 to 55-26).

24 There is a significant possibility of prejudice to Plaintiffs if default is not entered
25 because Plaintiffs would be deprived of the only available avenue of redress for Defendant's
26 statutory violation. *See PepsiCo, Inc. v. California Sec. Cans*, 238 F. Supp.2d 1172, 1177
27 (C.D. Cal. 2002). As summarized above, Plaintiffs' complaint is sufficient on its face and
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1 the claim as pled is meritorious. That does not foreclose the possibility that the material facts
2 could be disputed if Defendant had appeared, however, it forfeited the right to challenge
3 those facts by failing to respond. With respect to factor four, Plaintiffs are seeking only
4 statutory damages, in the maximum amount of \$1000, foregoing their claim for actual
5 damages. The sum sought is small and statutorily limited, which favors granting default
6 judgment. With respect to factor six, nothing before the Court indicates Defendant's default
7 was due to excusable neglect. The record reflects Defendant's representative was personally
8 served with the original complaint, and Defendant was sent a copy of the request for entry
9 of default and application for default judgment. *See Shanghai Automation Instrument Co.,*
10 *Ltd. v. Kuei*, 194 F. Supp.2d 995, 1005 (N.D. Cal. 2001) (no excusable neglect because
11 defendants "were properly served with the Complaint, the notice of entry of default, as well
12 as the papers in support of the instant motion"). Defendant has made no appearance nor is
13 there an indication of any contact with Plaintiffs' counsel. Despite the strong policy favoring
14 a decision on the merits, Defendant's failure to appear renders that impossible, which is why
15 Rule 55 exists. Considering all the relevant factors, a default judgment is warranted.

16 The Court may hold a hearing to assess damages, however, it is not required if
17 plaintiff claims a liquidated sum or damages can be assessed based on affidavits. *See Davis*
18 *v. Fendler*, 650 F.2d 1154, 1161-62 (9th Cir. 1981). Because Plaintiffs seek only statutory
19 damages and they attached evidentiary submissions to the complaint and the application for
20 default damages, a hearing is unnecessary. When a debt collector violates the FDCPA with
21 respect to a person, that person can collect actual damages, additional damages as allowed
22 by the Court up to \$1000, and costs and reasonable attorney's fees. The maximum statutory
23 damages of \$1000 are warranted in this case because Defendant committed multiple and
24 repeated violations of the FDCPA and caused Plaintiffs to suffer emotional harm. Having
25 reviewed counsels' timekeeping records, billing rates and attorney declarations (Dkts. 11-1,
26 11-2), and considering the success achieved by counsel, the Court finds the requested fees
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1 (\$3,207.50) and costs (\$390) are reasonable and allowable pursuant to 15 U.S.C. §
2 1692k(a)(3).

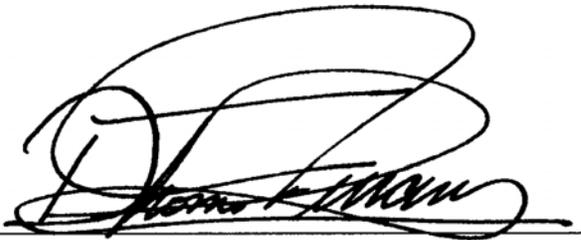
3 Accordingly,

4 **IT IS ORDERED** that Plaintiffs' Application for Entry of Default Judgment (Dkt.
5 11) is **GRANTED**.

6 **IT IS FURTHER ORDERED** that Plaintiffs are awarded damages in the amount of
7 \$1000, attorney's fees in the amount of \$3,207.50 and costs in the amount of \$390.

8 DATED this 13th day of August, 2009.

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D. Thomas Ferraro
United States Magistrate Judge