



1 559 F.2d 557, 560 (9th Cir. 1977)). Plaintiff's complaint alleges violations of the Fair Debt  
2 Collection Practices Act (FDCPA), 15 U.S.C. § 1692 *et seq.* (Doc. 1.) The allegations taken  
3 as true establish that Defendant began placing telephone calls to Plaintiff demanding  
4 payment of an alleged debt in October 2010. Defendant failed to provide written notification  
5 of the debt within five days of the initial communication, refused to provide a written  
6 statement regarding the debt, failed to identify the company name in messages, failed to  
7 disclose in voicemail that the company was trying to collect a debt, stated that there was a  
8 formal legal action pending and stated that failure to respond would result in service of a  
9 summons, threatened to take action that is not legally allowed or intended to be taken, and  
10 engaged in harassing conduct. The company also emailed Plaintiff but failed to provide the  
11 required written statement regarding the debt, threatened to institute legal proceedings  
12 against Plaintiff, and failed to disclose that the company was attempting to collect a debt and  
13 any information would be used for that purpose. This conduct as pled violated multiple  
14 provisions of the FDCPA, including 15 U.S.C. §§ 1692d, 1692d(6), 1692e, 1692e(2)(A),  
15 1692e(5), 1692e(10), 1692e(11), 1692f, 1692g. As a result of Defendant's conduct, Plaintiff  
16 suffered mental anguish causing stress, anxiety, nervousness, fear of answering the  
17 telephone, and embarrassment, which impacted his work and personal relationships. (Doc.  
18 1 at 3-8.)

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

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

21           The Court may hold a hearing to assess damages, however, it is not required if  
22 plaintiff claims a liquidated sum or damages can be assessed based on affidavits. *See Davis*  
23 *v. Fendler*, 650 F.2d 1154, 1161-62 (9th Cir. 1981). Because Plaintiff seeks only statutory  
24 damages and he attached evidentiary submissions to the application for default damages, a  
25 hearing is unnecessary. When a debt collector violates the FDCPA with respect to a person,  
26 that person can collect actual damages, additional damages as allowed by the Court up to  
27 \$1000, and costs and reasonable attorney’s fees. 15 U.S.C. § 1692k. The maximum statutory  
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1 damages of \$1000 are warranted in this case because Defendant committed multiple and  
2 repeated violations of the FDCPA and caused Plaintiff to suffer emotional harm. Having  
3 reviewed counsel's timekeeping records, billing rates and attorney declarations (Dkts. 11-1,  
4 11-2), and considering the success achieved by counsel, the Court finds the requested fees  
5 (\$4,070.0) and costs (\$480.82) reasonable and allowable pursuant to 15 U.S.C.  
6 § 1692k(a)(3).

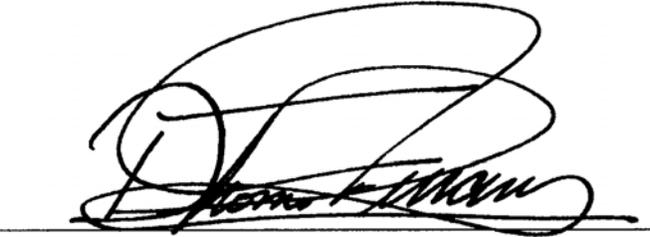
7 Accordingly,

8 **IT IS ORDERED** that Plaintiffs' Application for Entry of Default Judgment (Doc.  
9 14) is **GRANTED**.

10 **IT IS FURTHER ORDERED** that Plaintiff is awarded damages in the amount of  
11 \$1000, attorney's fees in the amount of \$4,070.00 and costs in the amount of \$480.82.

12 DATED this 1st day of August, 2011.

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D. Thomas Ferraro  
United States Magistrate Judge