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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Ignacio Xalamihua,

10 Plaintiff,

11 v.

12 GGC Legacy Janitorial Services LLC, et
13 al.,

14 Defendants.

No. CV-23-00009-TUC-BGM

ORDER

15 Before the Court is Plaintiff's Motion for Entry of Default Judgment Against
16 Defendants GGC Legacy Janitorial Services, LLC, and George Johnson. (Doc. 23.) For
17 the reasons that follow, the motion is granted and Plaintiff is awarded \$3,060 in damages.

18 **BACKGROUND**

19 From approximately October 31, 2022, through November 12, 2022, Plaintiff
20 Ignacio Xalamihua worked for Defendants GGC Legacy Janitorial Services LLC (GGC
21 Legacy) and George Johnson, an owner of GGC Legacy, as a night janitor cleaning grocery
22 stores in Tucson, Arizona. (Doc. 1, ¶¶ 32-35.) Defendants hired Plaintiff as a full-time
23 employee at a pay rate of \$17.00 per hour. (*Id.* ¶ 36.) During the two weeks that Plaintiff
24 worked for Defendants, he worked approximately sixty hours. (*Id.* ¶ 38.) Plaintiff was
25 supposed to be paid weekly, but the only paycheck he received was returned for insufficient
26 funds, and he failed to receive any other remuneration. (*Id.* ¶¶ 37-42, 45.) On or about
27 November 12, 2022, Plaintiff left employment with Defendants because they failed to pay
28 him for any of the work that he performed. (*Id.* ¶¶ 43-45.)

1 **PROCEDURAL HISTORY**

2 On January 6, 2023, Plaintiff filed his complaint raising three claims for unpaid
3 wages against Defendants GGC Legacy and George Johnson, among others. (*See* Doc. 1
4 at 10-14.) Plaintiff's claims involve: (i) unpaid minimum wages under the Fair Labor
5 Standards Act (FLSA); (ii) unpaid minimum wages under the Arizona Minimum Wage
6 Act (AMWA); and (iii) unpaid wages under the Arizona Wage Act (AWA). (*Id.* ¶¶ 58-
7 70.) Nineteen days later, Plaintiff consented to Magistrate Judge Jurisdiction. (Doc. 7.)

8 On January 13, 2023, copies of a summons, complaint, and magistrate judge
9 jurisdiction consent form were served upon GGC Legacy via its authorized agent. (Doc.
10 8.) Later the same day, George Johnson was personally served with the same process at
11 his business. (Doc. 9.) Plaintiff failed to serve the remaining five defendants.

12 On March 8, 2023, Plaintiff filed an application for entry of default, requesting that
13 the Clerk of Court enter default against the served Defendants. (Doc. 11.) Approximately
14 one month later, the Court held a telephonic status conference, where it discussed the
15 default judgment process with Plaintiff. (Doc. 14.) Shortly after the conference, Plaintiff
16 voluntarily dismissed four of the five remaining unserved defendants. (Doc. 15.)

17 On July 21, 2023, a second telephonic status conference was held where the Court
18 discussed Plaintiff's application for entry of default. (Doc. 19.) The Court instructed the
19 Clerk of Court to enter default and Plaintiff to file a motion for entry of default judgment
20 upon the Clerk's entry of default. (*Id.*) The Court noted that it would determine whether
21 to set an evidentiary hearing once Plaintiff's motion was filed. (*Id.*) The same day, the
22 Clerk entered default against Defendants. (Doc. 17.)

23 On July 24, 2023, the Court ordered Plaintiff to serve Defendants with a copy of his
24 application for entry of default via mail or file an amended certificate of service stating that
25 Defendants had been served as such. (Doc. 18.) Plaintiff had inadvertently indicated that
26 Defendants were served with a copy of his application via email. (*See* Doc. 11 at 2.) Four
27 days later, Plaintiff filed an amended certificate of service indicating that Defendants had
28 originally been served with a copy of his application via First Class mail. (Doc. 20.)

1 **I. Jurisdiction Over Case and Parties**

2 “When entry of judgment is sought against a party who has failed to plead or
3 otherwise defend, a district court has an affirmative duty to look into its jurisdiction over
4 both the subject matter and the parties.” *In re Tuli*, 172 F.3d 707, 712 (9th Cir. 1999).
5 Subject matter jurisdiction involves a court’s “power to adjudicate [a] case.” *Steel Co. v.*
6 *Citizens for Better Env’t.*, 523 U.S. 83, 89 (1998). Congress has authorized district courts
7 to exercise subject matter jurisdiction over “all civil actions arising under the Constitution,
8 laws, or treaties of the United States.” 28 U.S.C. § 1331; *Arbaugh v. Y&H Corp.*, 546 U.S.
9 500, 505 (2006). This power is known as federal question jurisdiction. *Arbaugh*, 546 U.S.
10 at 513. Under 28 U.S.C. § 1367, Congress has also authorized district courts to exercise
11 subject matter jurisdiction over state-law claims substantially related to a claim based on
12 federal law. *Id.* at 506. This power is known as supplemental jurisdiction. *Id.*

13 Personal jurisdiction “is the power of a court to enter judgment against a person.”
14 *S.E.C. v. Ross*, 504 F.3d 1130, 1138 (9th Cir. 2007). There are two categories of personal
15 jurisdiction: general jurisdiction and specific jurisdiction. *Goodyear Dunlop Tires*
16 *Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011). Since *International Shoe v.*
17 *Washington*, 326 U.S. 310 (1945), specific jurisdiction has become the focal point of
18 jurisdictional theory. *Id.* at 924-25. “Specific jurisdiction exists when a case arises out of
19 or relates to the defendant's contacts with the forum,” *Ranza v. Nike, Inc.*, 793 F.3d 1059,
20 1068 (9th Cir. 2015) (cleaned up); and it requires the satisfaction of three conditions, *Ratha*
21 *v. Phatthana Seafood Co.*, 35 F.4th 1159, 1171 (9th Cir. 2022). “First, the defendant must
22 either purposefully direct his activities toward the forum or purposefully avail himself of
23 the privileges of conducting activities in the forum.” *Ratha*, 35 F.4th at 1171 (cleaned up).
24 “Second, the claim must be one which arises out of or relates to the defendant's forum-
25 related activities.” *Id.* (cleaned up). “And third, the exercise of jurisdiction must comport
26 with fair play and substantial justice[.]” *Id.* (cleaned up). To effectuate jurisdiction over a
27 defendant, the defendant must also be served with process under Federal Rule of Civil
28 Procedure 4. *Benny v. Pipes*, 799 F.2d 489, 492 (9th Cir. 1986).

1 Plaintiff brings unpaid wage claims under the FLSA, AMWA, and AWA. (Doc. 1.)
2 The Court has subject matter jurisdiction over Plaintiff’s FLSA claim because it arises
3 under the laws of the United States. *See* 28 U.S.C. § 1331. The Court has supplemental
4 subject matter jurisdiction over Plaintiff’s AMWA and AWA claims because the state law
5 claims “are so related to” the federal FLSA claim “that they form part of the same case or
6 controversy” under Article III of the Constitution. 28 U.S.C. § 1367(a). The Court has
7 personal jurisdiction over GGC Legacy and Mr. Johnson because they have purposefully
8 conducted business in Arizona, Plaintiff’s wage claims arise out of Defendants’ forum-
9 related business activities, and Defendants have sufficient minimum contacts with Arizona
10 such that the exercise of jurisdiction does not offend traditional notions of fair play and
11 substantial justice. Venue is also proper because a substantial part of the events giving rise
12 to Plaintiff’s claims occurred in Pima County, Arizona. 28 U.S.C. § 1391(b)(2).

13 **II. *Eitel* Factors Favor Default Judgment**

14 A court’s decision whether to enter a default judgment is a discretionary one.
15 *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980); *see also Eitel*, 782 F.2d at 1471
16 (describing factors “which may be considered by court in exercising discretion as to the
17 entry of default judgment”). In applying the *Eitel* factors, “the general rule is that well-
18 pled allegations in the complaint regarding liability are deemed true[,]” and the district
19 court “is not required to make detailed findings of fact.” *Fair Hous. of Marin v. Combs*,
20 285 F.3d 899, 906 (9th Cir. 2002). “However, necessary facts not contained in the
21 pleadings, and claims which are legally insufficient, are not established by default.” *Cripps*
22 *v. Life Ins. Co. of N. Am.*, 980 F.2d 1261, 1267 (9th Cir. 1992). The Court concludes that
23 six of seven *Eitel* factors weigh in favor of entering default judgment.

24 **A. First, Fifth, Sixth, and Seventh *Eitel* Factors**

25 In cases where the defendants have failed to participate in the litigation, the first,
26 fifth, sixth, and seventh *Eitel* factors are easily addressed. *Zekelman Indus. Inc. v. Marker*,
27 No. CV-19-02109-PHX-DWL, 2020 WL 1495210, at *3 (D. Ariz. Mar. 27, 2020). The
28 first *Eitel* factor weighs in favor of default judgment because denying Plaintiff’s motion

1 will leave him “without other recourse for recovery.” *PepsiCo, Inc. v. Cal. Sec. Cans*, 238
2 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002). The fifth *Eitel* factor weighs in favor of default
3 judgment because there is no dispute over material facts due to Defendants’ failure to
4 participate in the litigation. *See id.* at 1177 (ruling that “[u]pon entry of default, all well-
5 pleaded facts in the complaint are taken as true, except those relating to damages.”). The
6 sixth *Eitel* factor weighs in favor of default judgment because Defendants were properly
7 served with process, (*see* Docs. 8, 9), and it is unlikely that their failure to answer was the
8 result of excusable neglect. *See Shanghai Automation Instrument Co. v. Kuei*, 194 F. Supp.
9 2d 995, 1005 (N.D. Cal. 2001) (ruling that there was no excusable neglect when defendants
10 were properly served with the complaint, notice of entry of default, and papers in support
11 of the plaintiff’s motion for entry of default judgment). Finally, although the seventh *Eitel*
12 factor, which considers the policy favoring a decision on the merits, generally weighs
13 against default judgment, the existence of Federal Rule of Civil Procedure 55(b) “indicates
14 that this preference, standing alone, is not dispositive.” *PepsiCo*, 238 F. Supp. 2d at 1177.
15 Therefore, the first, fifth, and sixth *Eitel* factors weigh in favor of default judgment, while
16 the seventh *Eitel* factor is neutral.

17 **B. Second and Third *Eitel* Factors**

18 The second and third *Eitel* factors—the merits of the substantive claims and the
19 sufficiency of the complaint—are often “analyzed together and require courts to consider
20 whether a plaintiff has stated a claim on which it may recover.” *Vietnam Reform Party v.*
21 *Viet Tan - Vietnam Reform Party*, 416 F. Supp. 3d 948, 962 (N.D. Cal. 2019) (cleaned up).
22 Of all the *Eitel* factors, “courts often consider the second and third factors to be the most
23 important.” *Id.* (cleaned up). The Court concludes that Plaintiff states plausible claims
24 under the FLSA, AMWA, and AWA, respectively.

25 **1. Plaintiff States FLSA Claim**

26 The FLSA requires employers to pay minimum wages to nonexempt, i.e., hourly
27 employees. *Sloan v. Am. Brain Tumor Ass'n*, 901 F.3d 891, 894 (7th Cir. 2018) (citing
28 29 U.S.C. §§ 206-207). The FLSA’s minimum wage provision entitles employees to a

1 wage “not less than \$7.25 an hour.” 29 U.S.C. § 206(a). To state a plausible minimum
2 wage claim under the FLSA, a plaintiff must allege that his weekly wages fall below the
3 statutory minimum. *Heck v. Heavenly Couture, Inc.*, No. 3:17-CV-0168-CAB-NLS, 2017
4 WL 4476999, at *4 (S.D. Cal. Oct. 6, 2017); *see also Alvarez v. IBP, Inc.*, 339 F.3d 894,
5 914-15 (9th Cir. 2003) (cleaned up) (“We have approved approximated awards where
6 plaintiffs can establish, to an imperfect degree of certainty, that they have performed work
7 and have not been paid in accordance with the FLSA.”)

8 Plaintiff alleges that Defendants constitute “employers” and that he constitutes an
9 “employee” under the FLSA. (Doc. 1, ¶¶ 10-12, 20.) He contends that Defendants hired
10 him to work as a night janitor, cleaning grocery stores in Tucson, Arizona, for \$17.00 per
11 hour. (*Id.* ¶¶ 33, 35-36.) Plaintiff avers that Defendants agreed to pay him weekly and that
12 he worked for approximately sixty hours over two weeks without being compensated. (*Id.*
13 ¶¶ 37-42.) Plaintiff sufficiently states a claim for unpaid minimum wages under the FLSA.

14 **2. Plaintiff States AMWA Claim**

15 The AMWA is a state minimum wage statute that requires Arizona employees to be
16 paid no less than \$12 per hour in addition to yearly cost of living adjustments, beginning
17 on or after January 1, 2021. A.R.S. § 23-363(B); *Peralta v. Custom Image Pros LLC, et*
18 *al.*, No. CV-23-00358-PHX-JAT, 2023 WL 8455120, at *3 (D. Ariz. Dec. 6, 2023). To
19 state claim under the AMWA, a plaintiff must allege that he was not paid the applicable
20 minimum wage for the hours he worked. *Coe v. Hirsch, et al.*, No. CV-21-00478-PHX-
21 SMM (MTM), 2021 WL 5634798, at *2 (D. Ariz. Dec. 1, 2021).

22 Plaintiff alleges that Defendants constitute “employers” and that he constitutes an
23 “employee” under the AMWA. (Doc. 1, §§ 24-25.) He contends that Defendants hired
24 him to work as a night janitor, cleaning grocery stores in Tucson, Arizona, for \$17.00 per
25 hour. (*Id.* ¶¶ 33, 35-36.) Plaintiff avers that Defendants agreed to pay him weekly and that
26 he worked for approximately sixty hours over two weeks without compensation. (*Id.* ¶¶
27 37-42.) Plaintiff sufficiently states a claim for unpaid minimum wages under the AMWA.

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1 WL 65604, at *4 (D. Ariz. Jan. 3, 2008). Here, Plaintiff seeks unpaid minimum and
2 standard wages owed under the FLSA, AMWA, and AWA, along with liquidated damages.
3 (Doc. 1, ¶¶ 55-57.) Plaintiff asserts that he is entitled to \$3,060 in total damages, not
4 including post-judgment interest and reasonable attorney’s fees and costs. (Doc. 23 at 9-
5 11.) The Court finds the stated damages are not disproportionate or inappropriate based
6 on Plaintiff working sixty hours without pay. The Court also finds that Plaintiff correctly
7 indicates where his damages are engulfed by larger statutory awards. (See Doc. 23 at 9-
8 11); *Valenzuela v. Esser*, No. CV 22-01180 PHX CDB, 2023 WL 2815548, at *7 (D. Ariz.
9 Mar. 14, 2023), *report and recommendation adopted*, No. CV-22-01180-PHX-CDB, 2023
10 WL 2814078 (D. Ariz. Apr. 6, 2023) (ruling that “available legal opinions indicate that [a
11 p]laintiff is entitled only to the maximum amount of damages under either the state or
12 federal statute.”) Therefore, the fourth *Eitel* factor, in addition to the first, second, third,
13 fifth, and sixth *Eitel* factors, weighs in favor of entering default judgment, and the Court
14 concludes that entry of default judgment is appropriate.

15 **III. Plaintiff Entitled to Damages**

16 Having found entry of default judgment proper, the Court must determine Plaintiff’s
17 damages. *HTS, Inc. v. Boley*, 954 F. Supp. 2d 927, 947 (D. Ariz. 2013). In contrast to
18 Plaintiff’s other allegations, allegations pertaining to damages are not taken as true.
19 *Geddes*, 559 F.2d at 560. Rather, Plaintiff is required to provide evidence of his damages,
20 and the “damages sought must not be different in kind or amount from those set forth in
21 the complaint.” *Amini Innovation Corp. v. KTY Int’l Mktg.*, 768 F. Supp. 2d 1049, 1054
22 (C.D. Cal. 2011). The Court may enter a default judgment without a damages hearing
23 when “the amount claimed is a liquidated sum or capable of mathematical calculation.”
24 *HTS, Inc.*, 954 F. Supp. 2d at 947 (quoting *Davis v. Fendler*, 650 F.2d 1154, 1161 (9th Cir.
25 1981)). In determining damages, a court can rely on the plaintiff’s declarations, *Philip*
26 *Morris USA, Inc. v. Castworld Prod., Inc.*, 219 F.R.D. 494, 498 (C.D. Cal. 2003), and the
27 court has “wide latitude” in determining the amount of damages to award, *James v. Frame*,
28 6 F.3d 307, 310 (9th Cir. 1993).

1 Plaintiff requests damages in the amount of \$3,060, post-judgment interest, and
2 permission to file a motion for attorney’s fees and costs. (Doc. 23 at 11.) Plaintiff’s request
3 does not differ in kind from the damages he demanded in his complaint. (*Compare* Doc.
4 23 at 8-11 *with* Doc. 1, ¶¶ 61, 65, and 70.) The Court breaks down Plaintiff’s damages by
5 statutory claim to elucidate its award.

6 **A. FLSA Damages**

7 Plaintiff asserts that his unpaid minimum wages under the FLSA are \$435,¹ the
8 product of 60 hours multiplied by the federal minimum wage of \$7.25 per hour. (Doc. 23
9 at 6.) Plaintiff seeks liquidated damages for his FLSA claim. (*Id.* at 8-9.) Under the FLSA,
10 “[a]ny employer who violates . . . section 206 or section 207 . . . shall be liable to the
11 employee . . . in the amount of [his] unpaid minimum wages, . . . and in an additional equal
12 amount as liquidated damages.” 29 U.S.C. § 216(b). Plaintiff’s unpaid minimum wages
13 are \$435, and he is entitled to another \$435 as liquidated damages. As such, Plaintiff is
14 eligible for \$870 in liquidated damages under the FLSA.

15 **B. AMWA Damages**

16 Plaintiff next asserts that his unpaid minimum wages under the AMWA are \$768,
17 the product of 60 hours multiplied by the Arizona minimum wage of \$12.80 per hour.
18 (Doc. 23 at 6.) Under the AMWA, “[a]ny employer who fails to pay the wages . . . required
19 . . . shall be required to pay the employee the balance of the wages . . . , including interest
20 thereon, and an additional amount equal to twice the underpaid wages[.]” A.R.S. § 23-
21 364(G). Plaintiff’s underpaid wages are \$768, and he is entitled to an additional \$1,536 as
22 damages. As such, Plaintiff is eligible for \$2,304 in damages under the AMWA.

23 **C. AWA Damages**

24 Plaintiff also asserts that his unpaid wages under the AWA are \$1,020, the product
25 of 60 hours multiplied by his agreed upon wage of \$17.00 per hour. (Doc. 23 at 6.) Under
26 the AWA, “if an employer . . . fails to pay wages due any employee, the employee may
27 recover . . . an amount that is treble the amount of the unpaid wages.” A.R.S. § 23-355(A).

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¹ Plaintiff miscalculates this amount as \$439.50 in his motion. (*See* Doc. 23 at 6.)

1 Plaintiff's unpaid wages are \$1,020, and he is entitled to three times that amount. As such,
2 Plaintiff is eligible for \$3,060 in damages under the AWA.

3 **D. Total Damages**

4 Plaintiff is entitled only to the maximum amount of damages under either the state
5 or federal statutes. *Valenzuela*, 2023 WL 2815548, at *7. He recognizes as much in his
6 motion stating that his AMWA award engulfs his FLSA award and his AWA award engulfs
7 his AMWA award. (*See* Doc. 23 at 9.) Plaintiff requests "total damages in the amount of
8 \$3,060 in trebled unpaid wages." (*Id.*) The Court finds that this demand accurately
9 calculates the damages to which Plaintiff is entitled and that his request is supported by a
10 Declaration. (*See* Doc. 23-1.) Accordingly, the Court awards Plaintiff \$3,060 in damages.

11 Additionally, the Court finds Plaintiff's requests for post-judgment interest and
12 permission to file a motion for attorney's fees and costs legally appropriate. *See* 29 U.S.C.
13 § 216(b); 28 U.S.C. § 1961(a). Accordingly,


14 **IT IS ORDERED** that Plaintiff's Motion for Entry of Default Judgment Against
15 Defendants GGC Legacy Janitorial Services, LLC, and George Johnson (Doc. 23) is
16 GRANTED.

17 **IT IS FURTHER ORDERED** that Plaintiff is awarded \$3,060 plus post-judgment
18 interest against Defendant GGC Legacy Janitorial Services LLC, and that Defendants GGC
19 Legacy Janitorial Services LLC and George Johnson shall be jointly and severally liable
20 for \$2,304 of that amount.

21 **IT IS FURTHER ORDERED** that Plaintiff shall have no later than 14 days after
22 entry of Judgment to file an application for attorney's fees and costs under LRCiv 54.2.

23 **IT IS FURTHER ORDERED** that the Clerk of Court shall enter judgment in
24 Plaintiff's favor and close this case.

25 Dated this 26th day of December, 2023.

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Honorable Bruce G. Macdonald
United States Magistrate Judge