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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CRANEVEYOR CORPORATION,)	CV 16-6049-RSWL-Ex
)	
Plaintiff,)	ORDER re: APPLICATION
)	FOR DEFAULT JUDGMENT
v.)	AGAINST DEFENDANT AMK
)	EXPRESS, INC. [15]
)	
AMK EXPRESS INC. and DOES)	
1-10,)	
)	
Defendants.)	
)	
)	
)	

Plaintiff Craneveyor Corporation ("Plaintiff") hired Defendant AMK Express, Inc. ("Defendant") to transport two hoists and ten end trucks from Michigan to California. The goods arrived in California damaged by rust and salt, and the present Action ensued. Currently before the Court is Plaintiff's Application for Default Judgment by Court Against Defendant ("Motion" or "Motion for Default Judgment") [15].

1 Having reviewed all papers submitted pertaining to this
2 Motion, the Court **NOW FINDS AND RULES AS FOLLOWS:** the
3 Court **GRANTS** Plaintiff's Motion and enters default
4 judgment against Defendant as to all claims. The Court
5 awards \$38,785.50 in damages to Plaintiff, along with
6 costs.

7 I. BACKGROUND

8 A. Factual Background

9 Plaintiff is a California corporation with offices
10 in Los Angeles. Compl. ¶ 2, ECF No. 1. Plaintiff
11 sells and distributes hoists and end trucks for use in
12 free-standing crane systems. Id. at ¶ 9. It also
13 purchases new hoists and end trucks for its own use.
14 Id. at ¶ 10. Defendant is an Illinois corporation that
15 regularly conducts business in California. Id. at ¶¶
16 3-4. Defendant is a common carrier pursuant to the
17 Interstate Commerce Commission ("ICC"). Id. at ¶ 14.

18 In January 2015, Plaintiff purchased brand new,
19 perfect condition hoists and end trucks from Detroit
20 Hoist and Crane. Id. at ¶¶ 11, 16. Plaintiff hired
21 Defendant to ship the hoists and end trucks via
22 Defendant's truck from Sterling Heights, Michigan to
23 South El Monte, California, where Plaintiff's business
24 is located. Id. at ¶¶ 12, 13. The load was a
25 "dedicated load," exclusively containing Plaintiff's
26 hoists and end trucks. Id. at ¶ 17. Plaintiff also
27 entered into a separate agreement to resell the hoists
28 and end trucks after their arrival. Id. at ¶ 21.

1 Plaintiff avers that Defendant got into a crash
2 somewhere in transit, damaging the goods. Id. at ¶ 20.
3 As a result, the goods were damaged upon arrival at
4 Plaintiff's facility. Id. Defendant allegedly failed
5 to protect the hoists and end trucks with tarp and
6 other protective materials. Id. at ¶ 18. Indeed,
7 Plaintiff discovered unused tarps in Defendant's truck,
8 suggesting it did not protect the goods. Id.
9 Moreover, Defendant tried to conceal the damage by
10 spraying the goods with WD-40 before arriving in South
11 El Monte. Id. at ¶ 19. Consequently, Plaintiff
12 incurred costs for evaluating the goods' damages and
13 was deprived of their resale value. Id. at ¶¶ 22, 23.

14 **B. Procedural Background**

15 Plaintiff filed a Complaint on August 12, 2016,
16 alleging violation of the Carmack Amendment, 49 U.S.C.
17 § 14706, for damage to Plaintiff's new hoists and end
18 trucks on the journey from Michigan to California. Id.
19 at ¶¶ 26-32. On August 19, 2016, Plaintiff served the
20 summons and complaint on Defendant in Aurora, Illinois.
21 Proof of Service, ECF No. 8. Defendant did not appear
22 or otherwise respond to the Complaint.¹ On October 5,
23 2016, Plaintiff requested the Clerk to enter default
24 against Defendant. ECF No. 12. On October 6, 2016,
25 the Clerk entered default against Defendant pursuant to
26 Federal Rule of Civil Procedure 55(a). ECF No. 13.

27
28 ¹ The Answer was due on September 9, 2016, but Defendant
allowed this deadline to lapse. See Fed. R. Civ. P. 12.

1 Plaintiff filed the instant Motion on November 30,
2 2016. The Opposition was due on December 13, 2016, but
3 none was filed.

4 II. DISCUSSION

5 A. Legal Standard

6 The granting of Default Judgment is within the
7 discretion of the district court. Aldabe v. Aldabe,
8 616 F.2d 1089, 1092 (9th Cir. 1980); see Fed. R. Civ.
9 P. 55. There are both procedural and substantive
10 requirements that must be met.

11 Procedurally, the requirements set forth in Federal
12 Rules of Civil Procedure 54(c) and 55(b), and Local
13 Rule 55-1 must be met. See Vogel v. Rite Aid Corp.,
14 992 F. Supp. 2d 998, 1006 (C.D. Cal 2014). Local Rule
15 55-1 provides: "When an application is made to the
16 Court for a default judgment, the application shall be
17 accompanied by a declaration in compliance with
18 F.R.Civ.P. 55(b)(1) and/or (2) and include the
19 following: (a) When and against what party the default
20 was entered; (b) The identification of the pleading to
21 which default was entered; (c) Whether the defaulting
22 party is an infant or incompetent person, and if so,
23 whether that person is represented by a general
24 guardian, committee, conservator or other
25 representative; (d) That the Service Members Civil
26 Relief Act, 50 U.S.C. App. § 521, does not apply; and
27 (e) That notice has been served on the defaulting
28 party, if required by F.R.Civ.P. 55(b)(2)." L.R. 55-1.

1 Courts should also consider the following factors
2 in determining whether to grant a motion for default
3 judgment: "(1) the possibility of prejudice to
4 plaintiff, (2) the merits of plaintiff's substantive
5 claims, (3) the sufficiency of the complaint, (4) the
6 sum of money at stake in the action, (5) the
7 possibility of a dispute concerning the material facts,
8 (6) whether defendant's default was the product of
9 excusable neglect, and (7) the strong public policy
10 favoring decisions on the merits." Eitel v. McCool,
11 782 F.2d 1470, 1471-72 (9th Cir. 1986).

12 If the court determines that the defendant is in
13 default, "the factual allegations of the complaint,
14 other than those relating to damages, are taken as
15 true.'" Televideo Sys., Inc. v. Heidenthal, 826 F.2d
16 915, 917-18 (9th Cir. 1987) (quoting Geddes v. United
17 Fin. Group, 559 F.2d 557, 560 (9th Cir. 1977)).

18 Additionally, "[w]hen entry of judgment is sought
19 against a party who has failed to plead or otherwise
20 defend, a district court has an affirmative duty to
21 look into its jurisdiction over both the subject matter
22 and the parties." In re Tuli, 172 F.3d 707, 712 (9th
23 Cir. 1999).

24 If the Court determines that the allegations in the
25 complaint are sufficient to establish liability, the
26 plaintiff must provide proof of all damages sought in
27 the complaint, and the Court must determine the "amount
28 and character" of the relief that should be awarded.

1 Id. at 1005-06 (citations omitted); PepsiCo, 238 F.
2 Supp. 2d at 1175. Federal Rule of Civil Procedure
3 54(c) requires that "[a] default judgment must not
4 differ in kind from, or exceed in amount, what is
5 demanded in the pleadings." Fed. R. Civ. P. 54(c).

6 **B. Analysis**

7 1. Jurisdiction and Service of Process

8 In considering whether to enter default judgment
9 against Defendant, the Court must first determine
10 whether it has jurisdiction over the subject matter and
11 the parties to the case. In re Tuli, 172 F.3d at 712.

12 a. *Subject Matter Jurisdiction and Personal*
13 *Jurisdiction are Proper*

14 The Court has subject matter jurisdiction over the
15 sole Carmack Amendment claim pursuant to 49 U.S.C. §
16 14706(d), which enforces liability under receipts and
17 bills of lading for goods damaged during transit.
18 Section 14706(d) permits a civil action against the
19 delivering carrier or carrier responsible for the loss
20 in a United States district court. 49 U.S.C. §
21 14706(d)(1),(2). Because a federal claim is stated,
22 the Court has federal question jurisdiction per 28
23 U.S.C. § 1331.

24 California state law applies if there is no
25 applicable federal statute controlling personal
26 jurisdiction. Panavision Int'l v. Toeppen, 141 F.3d
27 1316, 1320 (9th Cir.1998) (citation omitted). Pursuant
28 to California Code of Civil Procedure section 410.10,

1 California courts "may exercise jurisdiction on any
2 basis not inconsistent with the Constitution of this
3 state or of the United States." Thus, exercise of
4 personal jurisdiction is proper so long as the Due
5 Process Clause is satisfied. See Panavision, 141 F.3d
6 at 1320. "Due process requires that a defendant have
7 minimum contacts with the forum 'such that the
8 maintenance of the suit does not offend traditional
9 notions of fair play and substantial justice.' "
10 Brainerd v. Gov. of the Univ. of Alberta, 873 F.2d
11 1257, 1259 (9th Cir. 1989) (quotation omitted).

12 Personal jurisdiction is based on either specific or
13 general jurisdiction. Panavision, 141 F.3d at 1320.

14 The Court has personal jurisdiction over Defendant.
15 Although Defendant is an Illinois corporation with
16 business offices in DuPage County, Illinois, Compl. ¶
17 3, it regularly conducts business in California. Id.
18 at ¶ 4; see Lee Smalley Edmon et al., California
19 Practice Guide: Federal Civil Procedure Before Trial §
20 3:210.2 (2016) ("[A] corporation incorporated outside
21 California is subject to personal jurisdiction here if
22 'minimum contacts' exist between it and California.")

23 b. *Service of Process is Proper*

24 Service of process is met because Plaintiff served
25 Defendant with the Summons and Complaint on August 19,
26 2016, as evidenced by the Proof of Service [8].
27 Plaintiff served the Summons and Complaint on Alim
28 Kuchiev, Defendant's alleged president/owner, by

1 "delivering a copy of the summons and of the complaint
2 on the individual personally," Fed. R. Civ. P.
3 4(e)(2)(A), in compliance with Federal Rule of Civil
4 Procedure 4(h)(1)(A).²

5 2. Procedural Requirements

6 Plaintiffs have satisfied the procedural
7 requirements for default judgment pursuant to Federal
8 Rules of Civil Procedure 55 and Local Rule 55-1. Under
9 Federal Rule of Civil Procedure 55(a), the Court Clerk
10 properly entered default against Defendant on October
11 6, 2016 [13]. ECF No. 13. Plaintiff properly moved
12 pursuant to Rule 55(b) for entry of default judgment
13 [15].

14 Local Rule 55-1 also asks Plaintiff to provide the
15 following in an application for default judgment: (1)
16 when and against what party the default was entered;
17 (2) the identification of the pleading to which default
18 was entered; (3) whether the defaulting party is an
19 infant or incompetent person; (4) that the
20 Servicemembers Civil Relief Act does not apply; and (5)
21 notice has been served on the defaulting party.

22 Plaintiff has satisfied each of these requirements.
23 The Court Clerk entered default judgment against
24 Defendant as to the Complaint on October 6, 2016 [13].
25 Decl. of Randall Guritzky ("Guritzky Decl.") ¶ 4.

26
27 ² "[A] domestic or foreign corporation, or a partnership or
28 other unincorporated association that is subject to suit under a
common name, must be served . . . in the manner prescribed by
Rule 4(e)(1) for serving an individual."

1 Defendant is neither a minor, nor an incompetent person
2 nor in the military service or otherwise exempted under
3 the Soldier's and Sailor's Civil Relief Act of 1940,
4 the predecessor to the Servicemembers Civil Relief Act.
5 App. for Default Judgment ("App.") 2:4-6. Finally,
6 Defendant was served with notice of this Motion on
7 November 30, 2016 [16].

8 3. Eitel Factors

9 In support of its Motion, Plaintiff has
10 sufficiently set forth "(1) the possibility of
11 prejudice to plaintiffs; (2) the merits of plaintiffs'
12 substantive claims; (3) the sufficiency of the
13 complaint; (4) the sum of money at stake in the action;
14 (5) the possibility of a dispute concerning the
15 material facts; (6) whether defendants' default was the
16 product of excusable neglect; and (7) the strong public
17 policy favoring decisions on the merits." Eitel, 782
18 F.2d at 1471-72.

19 a. *Risk of Prejudice to Plaintiff*

20 The first Eitel factor considers whether a
21 plaintiff will suffer prejudice if a default judgment
22 is not entered. Vogel, 992 F. Supp. 2d at 1007.
23 Plaintiff argues that it would suffer prejudice without
24 Default Judgment because Defendant has stated that it
25 cannot and will not pay for Plaintiff's damages. App.
26 6:26-27. Absent entry of default judgment, Plaintiff
27 will remain uncompensated for the damages sustained
28 from its destroyed property. Mitsui O.S.K. Lines, Ltd.

1 v. Allied Transp. Sys. (USA), Inc., No. 10-cv-5586-SC,
2 2013 WL 2467701, at *2 (N.D. Cal. June 7, 2013)
3 (“[W]here default has been entered against a defendant,
4 a plaintiff has no other alternative by which to
5 recover damages.”)

6 Plaintiff also risks prejudice because Defendant
7 has failed to answer the Complaint. Entering Default,
8 rather than allowing Defendant to prolong litigation,
9 is necessary to mitigate Plaintiff’s losses. Fulton v.
10 Bank of America N.A., No. 2:16-cv-04870-CAS(JCx), 2016
11 WL 7156440, at *3 (C.D. Cal. Dec. 6, 2016) (plaintiff
12 is without other recourse for recovery if defendant has
13 not appeared or defended the suit).

14 b. *Sufficiency of the Complaint and*
15 *Likelihood of Success on the Merits*

16 The second and third Eitel factors consider the
17 merits of the plaintiff’s substantive claims and the
18 sufficiency of the complaint. “Under an [Eitel]
19 analysis, [these factors] are often analyzed together.”
20 Dr. JKL Ltd. v. HPC IT Educ. Ctr., 749 F. Supp.2d 1038,
21 1048 (N.D. Cal. 2010). Plaintiff has asserted a
22 meritorious claim for violation of the Carmack
23 Amendment, 49 U.S.C. § 14706.

24 The Carmack Amendment, part of the Interstate
25 Commerce Act, governs “a motor carrier’s liability to a
26 shipper for the loss of, or damage to, an interstate

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1 shipment of goods."³ Waller v. Gary & Koby Transp. Inc.
2 DBA Best Quality Movers, No. 1:08-cv-00725 AWI GSA,
3 2008 WL 4224722, at *4 (E.D. Cal. Sept. 15, 2008).
4 Under the Carmack Amendment, shippers can recover for
5 actual losses or property injury caused by common
6 carriers during shipment. Id. To plead a viable
7 Carmack Amendment claim, the Plaintiff must establish:
8 "(1) delivery of the goods to the initial carrier in
9 good condition, (2) damage of the goods before delivery
10 to their final destination, and (3) the amount of
11 damages." Id. (citations omitted).

12 From the four corners of the Complaint, Plaintiff
13 has alleged these elements. The hoists and end trucks
14 were new and in perfect condition prior to shipment.
15 Compl. ¶ 16; Guritzky Decl. ¶ 6, ECF No. 15-1. Upon
16 delivery, they were substantially damaged, id. at ¶ 20,
17 and Plaintiff sustained damages totaling \$38,785.50.
18 Guritzky Decl. ¶ 15. Plaintiff's submitted exhibits
19 and documentation also reveal likely success on
20 its Carmack Amendment claim. Plaintiff has extensive
21

22 ³ 49 U.S.C. § 14706(a)(1) provides: "A carrier providing
23 transportation or service . . . shall issue a receipt or bill of
24 lading for property it receives for transportation under this
25 part . . . The liability imposed under this paragraph is for the
26 actual loss or injury to the property caused by (A) the receiving
27 carrier, (B) the delivering carrier, or (C) another carrier over
28 whose line or route the property is transported in the United
States . . . Failure to issue a receipt or bill of lading does
not affect the liability of a carrier. A delivering carrier is
deemed to be the carrier performing the line-haul transportation
nearest the destination but does not include a carrier providing
only a switching service at the destination."

1 evidence supporting the "damaged goods" element.
2 According to Robert Norland, Operations Manager and
3 Plaintiff's Sales Manager, the hoists and end trucks
4 that arrived to the El Monte facility were covered with
5 rust moisture and road salt. Decl. of Robert Norland
6 ("Norland Decl.") ¶ 3, ECF No. 15-2. Plaintiff has
7 attached twenty seven photographs evidencing said
8 damage. Norland Decl. Ex. A. Moreover, Norland's
9 Claim Report, filed on February 11, 2015, indicates
10 extensive salt-water damage under welds and inside
11 load-bearing tube steel frames, leading to severe
12 corrosion. Guritzky Decl. Ex. A at 2.

13 In the February 3, 2015 Bill of Lading, Plaintiff
14 noted road salt damage from Defendant's failure to tarp
15 the load as well as hoist damage at the rope drums and
16 cables. Id. at 3. Additionally, Joseph Bartels, the
17 VeriClaim, Inc. Marine Surveyor who inspected the goods
18 on February 18, 2015, noted that "rust had spread along
19 the raw untreated steel services, electrical and
20 cable." Decl. Of Joseph Bartels ("Bartels Decl.") ¶ 4,
21 ECF No. 15-3. Disassembly of the end trucks and wheel
22 bearings removal also revealed water marks and rust.
23 Bartels Decl. Ex. A. And test results were positive
24 for chlorides, showing that salt had touched the load.
25 Id. at 3, 6-21.

26 Plaintiff also plausibly alleges a damages amount
27 associated with the damaged equipment, totaling
28

1 \$38,785.50.⁴ App. 2:11. This amount represents money
2 spent repairing and reconditioning the hoists and end
3 trucks and materials purchased for repairs. Id. at
4 6:8-24. Effectively, Plaintiff makes out a prima facie
5 case for a Carmack Amendment violation: the goods began
6 in new condition, arrived damaged, and a damages amount
7 ensued. Intercargo Ins. Co v. Burlington N. Santa Fe
8 R.R., 185 F. Supp. 2d 1103, 1111 (C.D. Cal. 2001).

9 c. *The Sum of Money at Stake in the Action*

10 "Under the [fourth] Eitel factor, the court must
11 consider the amount of money at stake in relation to
12 the seriousness of Defendant's conduct." PepsiCo, 238
13 F. Supp. 2d at 1176. "While the allegations in a
14 complaint are taken to be true for the purposes of
15 default judgment, courts must make specific findings of
16 fact in assessing damages." Moroccanoil, Inc. v.
17 Allstate Beauty Prod., Inc., 847 F. Supp. 2d 1197, 1202
18 (C.D. Cal. 2012). The Court will review declarations,
19 calculations, and other damages documentation to
20 determine whether the sum of money at stake is
21 appropriate. HICA Educ. Loan Corp. v. Warne, No. 11-

22
23 ⁴ The Court notes that the damages pled in the Complaint,
24 \$120,000, differ from the \$38,785.50 currently sought. Compl. ¶
25 31. Although "[a] judgment by default shall not be different in
26 kind from or exceed in amount that prayed for in the demand for
27 judgment," Fed. R. Civ. P. 54(c), the Court permits Plaintiff to
28 recover this amount that is approximately one-third less than the
amount originally sought. Moreover, Plaintiff alleged
entitlement to actual loss and property damages in the Complaint,
putting defendant on notice of these damages. Xerox Corp. v. A&M
Printing, No. CV 12-00043 MMM (Ex), 2013 WL 2180927, at *6 (C.D.
Cal. May 20, 2013).

1 CV-04287-LHK, 2012 WL 1156402, at *3 (N.D. Cal. Apr. 6,
2 2012).

3 Plaintiff requests \$38,785.50 for damages and
4 repairs arising from Defendant's failure to properly
5 secure and protect its goods. App. 6:8-9. This total
6 stems from \$36,128.50 for 380.3 hours spent on repairs
7 and \$2,657 for chemical-removing materials, for load
8 cables, and to timely complete the repairs. App. 6:17-
9 24. Plaintiff also avers that it spent \$1,156.34 for
10 VeriClaim, Inc.'s investigation of Plaintiff's damages,
11 but apparently does not include this amount in its
12 requested damages. Bartels Decl. ¶ 7, Ex. C.

13 The Carmack Amendment "makes a carrier covered by
14 the [Interstate Commerce Act] liable for damages it
15 causes to property it transports in the amount of the
16 'actual loss or injury to the property.'" Contempo
17 Metal Furniture Co. of Cal. v. E. Tex. Motor Freight
18 Lines, Inc., 661 F.2d 761, 764 (9th Cir. 1981) (quoting
19 49 U.S.C. 14706(a)(1)). While actual loss damages are
20 typically calculated by the "difference between the
21 market value of the property in the condition in which
22 it should have arrived at its destination and its
23 market value in the condition in which it did arrive,"
24 id., the cost of repair—if less than market value—is
25 another apt measure of damages. Dutch Enters., Inc. v.
26 Consol. Freightways, Inc., Civ. No. 93-1686 CW (FSL),
27 1994 WL 835069, at *3-4 (N.D. Cal. July 13, 1994). The
28 shipper may recover repair costs, so long as they are

1 less than the goods' market value.

2 Here, the repair costs of \$38,785.50 are not only
3 authorized as actual losses under the Carmack Amendment
4 and less than the goods' fair market value of \$118,000,
5 but they are appropriately tailored to the
6 egregiousness of Defendant's conduct. App. 6:8.

7 Defendant drove the goods—which had a fair market value
8 of \$118,000—across country in winter weather without a
9 tarp to protect them, attempted to mask the damage by
10 applying WD40 spray and by sanding the goods, refused
11 to sign a delivery receipt acknowledging damages, and
12 failed to apprise Plaintiff that Defendant's insurance
13 carrier had denied Plaintiff's claim. App. 4:24-27,
14 6:8; Norland Decl. ¶ 4; Guritzky Decl. Ex. A at 2.
15 Thus, this factor counsels towards granting default
16 judgment.

17 d. *The Possibility of a Dispute Concerning*
18 *the Material Facts*

19 The fifth Eitel factor examines the likelihood of
20 dispute between the parties regarding the material
21 facts in the case. A defendant is "deemed to have
22 admitted all well-pleaded factual allegations" in the
23 Complaint upon entry of default. DirectTV, Inc. v. Hoa
24 Huynh, 503 F.3d 847, 851 (9th Cir. 2007). Although
25 factual allegations relating to the damages amount are
26 not taken as true, Geddes v. United Fin. Group, 559
27 F.2d 557, 560 (9th Cir. 1977), the Carmack Amendment
28 leaves little room for dispute that a motor carrier is

1 liable for actual property loss or damage. 49 U.S.C. §
2 14706(a)(1) (“[L]iability . . . is for the actual loss
3 or injury to the property”) And Plaintiff has
4 adequately alleged that Defendant caused actual damage
5 to its brand-new hoists and end trucks.

6 Above all else, a dispute concerning the material
7 facts is unlikely. Defendant has failed to appear in
8 this case since the Complaint was filed in August 2016,
9 let alone contradict the allegations that it
10 substantially damaged Plaintiff’s goods on the drive
11 from Michigan to California, as set forth in Bartels’s
12 Marine Cargo Survey investigation Report and attached
13 photographs. IO Grp., Inc. v. Jordon, 708 F. Supp. 2d
14 989, 999-1000 (N.D. Cal. 2010)(factor weighed towards
15 granting default judgment where Defendant appeared in
16 the action and filed three documents, but did not
17 contradict the evidence that his website reproduced
18 Plaintiff’s copyrighted works). This factor weighs in
19 favor of granting default judgment.

20 e. *Whether Defendant’s Default was the*
21 *Product of Excusable Neglect*

22 Excusable neglect takes into account factors like
23 “prejudice . . . , the length of the delay and its
24 potential impact on judicial proceedings, the reason
25 for the delay, including whether it was within the
26 reasonable control of the movant, and whether the
27 movant acted in good faith.” J.L. v. Moreno Valley
28 Unified Sch. Dist., No. CV 09-1978 ODW (PJWx), 2010 WL

1 1708839, at *1 (C.D. Cal. Apr. 20, 2010) (internal
2 quotation marks omitted) (quoting Pioneer Inv. Servs.
3 Co. v. Brunswick Assoc. Ltd., 507 U.S. 380, 395
4 (1993)). The possibility of excusable neglect is
5 remote here, as Defendant was properly served with the
6 summons, Complaint, and instant Motion, indicating that
7 it had proper notice of the action. See Shanghai Auto.
8 Instrument Co. v. Kuei, 194 F. Supp. 2d 995, 1005 (N.D.
9 Cal. 2001) (finding no excusable neglect because
10 defendants were properly served with the complaint,
11 notice of entry of default, and papers in support of
12 motion for default judgment). Moreover, Defendant has
13 made no attempt to appear, respond, or otherwise defend
14 itself in this action, let alone furnish an excuse for
15 this evident neglect. Landstar Ranger, Inc. v. Parth
16 Enters. Inc., 725 F. Supp. 2d 916, 922 (C.D. Cal.
17 2010).

18 f. *The Strong Public Policy Favoring*
19 *Decisions on the Merits*

20 Although there is a strong policy underlying the
21 Federal Rules of Civil Procedure, which favors
22 decisions on the merits "whenever reasonably possible,"
23 Eitel, 782 F.2d at 1427, "this preference, standing
24 alone, is not dispositive." Vogel, 992 F. Supp. 2d at
25 1013 (citations and quotations omitted). In deciding
26 to grant default judgment, the court in PepsiCo noted:
27 "Defendant's failure to answer the Complaint makes a
28 decision on the merits impractical, if not impossible."

1 238 F. Supp. 2d at 1177. Here, the substantive claims
2 cannot be adjudicated, as Defendant has not answered
3 the Complaint. Am. Auto. Assoc., Inc. v. H&H Towing
4 Serv., 2016 WL 1449535, at *8 (C.D. Cal. April 11,
5 2016). Thus, the seventh factor does not preclude
6 entry of default judgment.

7 g. *Conclusion Regarding Eitel Factors*

8 Accordingly, because all Eitel factors weigh in
9 favor of entering default judgment, the Court **GRANTS**
10 Plaintiff's Motion for Default Judgment [15] against
11 Defendant as to the sole Carmack Amendment claim.

12 4. Character and Amount of Plaintiff's Recovery

13 Turning to specific amount of damages requested,
14 the Court finds the \$38,785.50 appropriate. Plaintiff
15 seeks two separate amounts for repair jobs completed on
16 the damaged goods. Plaintiff argues that it took
17 "immediate action" to mitigate its damages, working on
18 original job number 414176 for 138.2 hours at a shop
19 rate of \$95.00/hour, totaling \$13,129. App. 6:13-18;
20 Norland Decl. ¶ 11. Plaintiff opened this job while in
21 the interim it set up a full job to record the time to
22 complete the repairs. Id. Job 415222 recorded the
23 remainder of time spent on the repairs: 242.1 hours at
24 a shop rate of \$95.00/hour, totaling \$22,999.50. Id.
25 at ¶ 12.

26 To substantiate this amount, Plaintiff submits the
27 Declaration of Robert Norland, Plaintiff's Operations
28 Manager and Crane Sales Manager who personally engaged

1 in and supervised efforts to treat and remove rust from
2 the damaged goods. Id. at ¶ 9. The declaration,
3 attached photographs, and invoices set forth the
4 extensive cleaning process, including disassembling,
5 inspecting, cleaning, and polishing 20 wheels, 20 axle
6 shafts, 40 bearing caps, and 90 sealed double roller
7 bearings for 10 different end trucks. The declaration
8 also describes the complex process for reconditioning
9 the hoists, using load cables, rust removing chemicals,
10 and abrasives. In total, 380.3 hours, at the rate of
11 \$95/hour, were spent on this repair process, totaling
12 \$36,128.50. The costs of the materials used, as stated
13 in Norland's Declaration, totaled \$2,657. Norland
14 Decl. ¶ 15. Although the initial damages quote was
15 \$117,466.57, Bartels Decl. Ex. B at 1, Plaintiff
16 mitigated its damages to the requested amount.
17 Plaintiff has thus demonstrated it is entitled to the
18 requested \$38,785.50 in damages for repairing the
19 hoists and end trucks.

20 III. CONCLUSION

21 The Court **GRANTS** Plaintiffs' Motion for Default
22 Judgment [15].

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1 The Court enters default judgment as to Defendant for
2 the sole Carmack Amendment claim. The Court also
3 awards \$38,785.50 in damages plus costs.

4 **IT IS SO ORDERED.**

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7 DATED: January 10, 2017

s/ RONALD S.W. LEW

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HONORABLE RONALD S.W. LEW
Senior U.S. District Judge

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