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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHARLES and ALBERTA
MIDDLESWORTH.

Plaintiffs,

v.

OAKTREE COLLECTIONS, INC.,

Defendant.

1:09-CV-601 OWW BAK [SMS]

MEMORANDUM DECISION AND
ORDER RE APPLICATION FOR
DEFAULT JUDGMENT.

Plaintiffs Charles and Alberta Middlesworth filed a first amended complaint ("FAC") for unlawful debt collection practices under the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692, on May 7, 2009. Doc. 6. They allege that Defendant, Oaktree Collections, Inc., placed threatening, harassing, and abusive collection calls to Plaintiffs demanding payment for an alleged debt and threatening to repossess Plaintiffs' vehicle and report Plaintiffs to credit bureaus, even though Defendant had no intention of doing so, all in violation of FDCPA. See FAC ¶ 25(a)-(g). In addition, Plaintiffs allege that Defendant violated FDCPA by failing to disclose in subsequent communications that the communications were from a debt collector and by engaging in unconscionable means to collect or attempt to collect an alleged debt. See FAC

1 ¶25(h) - (i) .

2 The amended complaint was served on Mr. Terry
3 Brayban, at Defendant's business address, 20424 W.
4 Valley Blvd., #B, Tehachapi, CA 93561 on May 20, 2009.
5 Doc. 8. Default was entered on July 17, 2009. Doc. 13.
6 Plaintiff now seeks entry of default judgment in the
7 amount of \$5,350.58, representing statutory damages in
8 the amount of \$1000.00 under 15 U.S.C. § 1692k(a)(2)(A),
9 \$3114.90 in attorney's fees, \$485.68 in costs, and
10 \$750.00 in anticipated collection costs. Doc. 14.

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13 A. \$1000.00 in Statutory Damages is Justified.

14 The FAC alleges only one claim describing conduct
15 that allegedly resulted in nine separate violations of
16 the FDCPA. See FAC ¶25. Title 16, United States Code,
17 section 1692(k)(a) provides:

18 Except as otherwise provided by this section,
19 any debt collector who fails to comply with any
20 provision of this subchapter with respect to any
 person is liable to such person in an amount
 equal to the sum of--

21 (2)(A) in the case of any action by an
22 individual, such additional damages as the
23 court may allow, but not exceeding
 \$1,000....

24 Defendant has not offered any evidence to counter
25 Plaintiffs' allegations that Defendant used harassing
26 and abusive language to collect an alleged debt, which
27 makes out a prima facie violation of 15 U.S.C.

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1 1692d(1) ("A debt collector may not engage in any conduct
2 the natural consequence of which is to harass, oppress,
3 or abuse any person in connection with the collection of
4 a debt."). In light of Defendants' default and the
5 allegations in the complaint, Plaintiffs prevail on
6 their statutory damages claim and are entitled to a
7 judgment in the amount of \$1000.00.
8

9 **B. \$3,114.90 in Attorney's Fees is Reasonable.**

10 Section 1692k(a)(3) provides that in the case of any
11 successful action to enforce liability under FDCPA, a
12 prevailing plaintiff may recover "the costs of the
13 action, together with a reasonable attorney's fee as
14 determined by the court."
15

16 The declarations and attachments submitted in
17 connection with the application for default judgment
18 demonstrate that the attorney's fees requested are
19 reasonable. One attorney who bills at \$394/hour spent
20 just over two hours on the case, another who bills at
21 \$290/hour, spent two and a half hours on the matter,
22 while a third attorney, who bills at \$250/hour, spent
23 less than five hours on the case. In addition, a
24 paralegal, who bills \$125/hour, worked less than four
25 hours on the case. The total time spent on the case by
26 the firm was less than thirteen hours. This is a
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1 reasonable expenditure of time to, among other things,
2 draft, serve, and file a complaint, an amended
3 complaint, and move for entry of default judgment.
4

5 C. \$485.68 in Costs is Reasonable.

6 Plaintiffs request \$485.68 in costs, representing
7 \$350.00 in filing fees and \$135.98 for service of
8 process. This is a reasonable request.
9

10 D. \$750.00 in Anticipated Collection Costs.

11 Plaintiffs also seek \$750.00 in anticipated
12 collection costs. Plaintiffs cite no authority for an
13 award of anticipated collection costs. The plain
14 language of § 1692k states that "the costs of the
15 action" itself may be recovered, but does not provide
16 for costs incurred in enforcing a resulting judgment.
17 See *Molinar v. Coleman*, 2009 WL 435274, *3 (N.D. Tex.
18 2009). This request is DENIED.
19

20 E. Entry of Default Judgment Is Appropriate.

21 Granting a motion for default judgment is within the
22 Court's discretion pursuant to Rule 55(b)(2). *Eitel v.*
23 *McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986). The
24 following factors apply: (1) the possibility of
25 prejudice to the plaintiff; (2) the merits of
26 plaintiff's substantive claim; (3) the sufficiency of
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1 the complaint; (4) the sum of money at stake in the
2 action; (5) the possibility of a dispute concerning
3 material facts; (6) whether the default was due to
4 excusable neglect, and (7) the strong policy underlying
5 the Federal Rules of Civil Procedure.

6 Here, prejudice is not an issue. Plaintiffs'
7 allegations, although straightforward, make out a prima
8 facie allegation of unfair debt collection under FDCPA.
9 Finally, the judgment sought less than \$5000.00.
10 Defendant will not be substantially burdened by entry of
11 default judgment. The *Eitel* factors favor entry of
12 default judgment, notwithstanding the preference for
13 disposition of cases on the merits. *Eitel*, 782 F.2d at
14 1471-72.
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17 Plaintiffs' motion for entry of default judgment is
18 GRANTED IN PART. Judgment shall be entered in favor of
19 Plaintiff and against Defendant in the amount of
20 \$4,600.58, which includes \$1000.00 in statutory damages,
21 \$3114.90 in attorney's, fees and \$485.68 in costs.
22
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24 SO ORDERED
25 DATED: November 3, 2009

26 /s/ Oliver W. Wanger
27 Oliver W. Wanger
28 United States District Judge