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United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

QUINSTREET, INC.,
Plaintiff,
v.
ADVISORWORLD.COM, INC.,
Defendant.

No. C 10-04532 WHA

**ORDER GRANTING IN PART
PLAINTIFF'S MOTION FOR
DEFAULT JUDGMENT**

INTRODUCTION

In this breach-of-contract action, plaintiff Quinstreet, Inc., moves for an entry of default judgment against defendant AdvisorWorld.com, Inc. For the following reasons, the motion is **GRANTED IN PART.**

STATEMENT

In January 2010, plaintiff Quinstreet, Inc., and defendant AdvisorWorld.com, Inc., entered into an agreement which provided that plaintiff would sell consumer contact information to defendant, subject to the terms and conditions of the agreement. Defendant failed to make payment. Plaintiff sent a demand letter in April 2010 but defendant failed to respond.

In October 2010, plaintiff filed its complaint asserting four claims: (1) breach of written agreement; (2) services had and received; (3) open book account, and (4) account stated. Plaintiff served defendant with the summons and complaint (Dkt. No. 6). Defendant failed to respond. The Clerk entered default against defendant, pursuant to plaintiff's request, in January 2011. Plaintiff served AdvisorWorld with notice of the Clerk's entry of default as well as the instant

1 motion (Dkt. No. 19-6). Plaintiff seeks the unpaid balance of \$98,640 plus interest at 18 percent
2 from the date of default, April 5, 2010. Plaintiff also seeks attorney’s fees and costs.

3 **ANALYSIS**

4 **A. DEFAULT JUDGMENT**

5 FRCP 55(b)(2) permits a court, following an entry of default, to enter default judgment
6 against a defendant. “The district court’s decision whether to enter a default judgment is a
7 discretionary one.” *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). The scope of relief
8 allowed through default judgment is limited by FRCP 54(c), which states that “[a] default
9 judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings.”

10 In the Ninth Circuit, a court is to consider several factors in exercising its discretion to
11 award default judgment:

12 (1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff’s
13 substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at
14 stake in the action; (5) the possibility of a dispute concerning material facts;
(6) whether the default was due to excusable neglect, and (7) the strong policy
underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

15 *Eitel v. McCool*, 782 F.2d 1470, 1471–72 (9th Cir. 1986). After entry of default, well-pled
16 allegations in the complaint regarding liability are taken as true, except as to amount of damages.
17 *Fair Hous. of Marin v. Combs*, 285 F.3d 899, 906 (9th Cir. 2002). Consequently, *Eitel* factors
18 two, three, and five weigh in favor of the entry of default judgment. For the following reasons,
19 each of the remaining factors also favor entry of default judgment.

20 *First*, if the motion were denied, plaintiff would be without a remedy. Failure to enter a
21 default judgment would therefore result in prejudice to plaintiff.

22 *Second*, the sum of money at stake is relatively small. In general, the fact that a large sum
23 of money is at stake is a factor disfavoring default judgment. *See Eitel*, 782 F.2d at 1472 (the fact
24 that \$2,900,000 was at stake, when considered in light of the parties’ dispute as to material facts,
25 supported the court’s decision not to enter judgment by default). In the instant case, plaintiff has
26 asked for a total of \$98,640 in damages. This is a far cry from the \$2,900,000 sum contemplated
27 in *Eitel*. This factor weighs in favor of entering default judgment.

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