

United States District Court
Northern District of California

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

GREGOR LESNIK and STJEPAN
PAPES,

Plaintiffs,

v.

EISENMANN SE, et al.,

Defendants.

Case No. 16-cv-01120-BLF

**ORDER DENYING DEFAULT
JUDGMENT ON CLAIMS 2 AND 3;
GRANTING RECONSIDERATION OF
DENIAL OF ATTORNEYS’ FEES ON
CLAIM 9; AND DENYING WITHOUT
PREJUDICE RULE 54 MOTION FOR
ATTORNEYS’ FEES**

[Re: ECF 613, 614, 615]

Before the Court are three motions filed by Plaintiff Stjepan Papes (“Papes”): (1) a renewed motion for default judgment on Claims 2 and 3, *see* Mot. for Def. Jud., ECF 613; (2) an administrative motion for leave to file a motion for reconsideration of a prior order denying attorneys’ fees in connection with Claim 9, *see* Admin. Mot., ECF 615; and (3) a motion for attorneys’ fees and costs on Claims 2, 3, and 9 under Federal Rule of Civil Procedure 54, *see* Fees Mot., ECF 614. Plaintiff Gregor Lesnik (“Lesnik”) is not a moving party with respect to the current motions. The Court finds the motions suitable for decision without oral argument. *See* Civ. L.R. 7-1(b).

For the reasons discussed below, Papes’ fourth motion for default judgment on Claims 2 and 3 is DENIED. Papes’ administrative motion for leave to file a motion for reconsideration, and his motion for reconsideration, are GRANTED. Finally, Papes’ Rule 54 motion for attorneys’ fees and costs is DENIED WITHOUT PREJUDICE.

I. BACKGROUND

This case was filed in 2016 and was litigated before District Judge Lucy H. Koh for nearly six years before it was reassigned the undersigned judge in 2022. The operative third amended complaint (“TAC”) alleges that Robert Vuzem and Ivan Vuzem are residents of Slovenia who own and hold executive positions at ISM Vuzem, d.o.o., a Slovenia-based company. *See* TAC ¶¶ 9-11, ECF 269. ISM Vuzem USA, Inc., now dissolved, was a wholly owned subsidiary of ISM Vuzem, d.o.o. *See id.* ¶ 12. Vuzem USA, Inc. is a wholly owned subsidiary of ISM Vuzem, d.o.o. *See id.* ¶ 13. HRID-MONT d.o.o. is a Slovenia-based company owned by the wife of Robert Vuzem. *See id.* ¶ 14. These defendants (“the Vuzem Defendants”) allegedly trafficked low-skilled European laborers by transporting them to the United States to perform work for American manufacturers for less than minimum wage and without overtime pay. *See id.* ¶¶ 55-57. Lesnik, a resident of Slovenia, and Papes, a resident of Croatia, allegedly were transported to the United States by the Vuzem Defendants to work at various car manufacturing plants. *See id.* ¶¶ 59-60.

The TAC asserts thirteen claims against thirty-seven defendants on behalf of Lesnik and Papes and all others similarly situated. *See generally* TAC. While the case was pending before Judge Koh, most of those claims and defendants were dismissed. *See* Status Report, ECF 605. The only claims remaining in the case are three claims asserted by Plaintiff Papes, proceeding individually, against the Vuzem Defendants: Claim 2 for minimum wages under the Fair Labor Standards Act (“FLSA”), Claim 3 for overtime wages under the FLSA, and Claim 9 for trafficking and coerced labor under the Trafficking Victims Protection Reauthorization Act (“TVPRA”). *See id.* The Vuzem Defendants have defaulted. *See* Clerk’s Entries of Default, ECF 430-31, 444-47.

Judge Koh denied three prior motions for default judgment against the Vuzem Defendants on Claims 2 and 3, without prejudice. *See* Prior Order Re Claims 2 and 3, ECF 587. Papes now brings a fourth motion for default judgment on Claims 2 and 3. Judge Koh granted in part Papes’ prior motion for default judgment on Claim 9 and denied Papes’ request for attorneys’ fees in connection with Claim 9. *See* Prior Order Re Claim 9, ECF 586. Papes seeks reconsideration of Judge Koh’s denial of attorneys’ fees in connection with Claim 9. Finally, Papes seeks an award of attorneys’ fees and costs in connection with Claims 2, 3, and 9.

II. MOTION FOR DEFAULT JUDGMENT ON CLAIMS 2 AND 3 (ECF 613)

On September 20, 2021, Judge Koh issued an order denying without prejudice Papes' third motion for default judgment against the Vuzem Defendants on Claims 2 and 3, which seek minimum wages and overtime wages under the FLSA. This Court discusses Judge Koh's ruling where relevant to Papes' current fourth motion for default judgment on Claims 2 and 3.

A. Legal Standard on Default Judgment

Default may be entered against a party who fails to plead or otherwise defend an action, who is neither a minor nor an incompetent person, and against whom a judgment for affirmative relief is sought. Fed. R. Civ. P. 55(a). After an entry of default, a court may, in its discretion, enter default judgment. Fed. R. Civ. P. 55(b)(2); *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980).

In deciding whether to enter default judgment, a court may consider the following factors: (1) the possibility of prejudice to the plaintiff; (2) the merits of the plaintiff's substantive claims; (3) the sufficiency of the complaint; (4) the sum of money at 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. *See Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986).

In considering these factors, all factual allegations in the plaintiff's complaint are taken as true, except those related to damages. *See TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987). When the damages claimed are not readily ascertainable from the pleadings and the record, the court may either conduct an evidentiary hearing or proceed on documentary evidence submitted by the plaintiff. *See Johnson v. Garlic Farm Truck Ctr. LLC*, 2021 WL 2457154, at *2 (N.D. Cal. Jun. 16, 2021).

B. Discussion

"When entry of judgment is sought against a party who has failed to plead or otherwise defend, a district court has an affirmative duty to look into its jurisdiction over both the subject matter and parties." *In re Tuli*, 172 F.3d 707, 712 (9th Cir. 1999). The Court discusses in turn jurisdiction, service of process, and the *Eitel* factors.

1 **1. Jurisdiction**

2 Judge Koh previously determined that federal question jurisdiction exists with respect to
3 Claims 2 and 3 because they are brought under a federal statute, the FLSA. *See* Prior Order Re
4 Claims 2 and 3 at 7-8. This Court agrees that federal question jurisdiction exists on that basis.

5 Judge Koh previously determined that personal jurisdiction exists with respect to five of
6 the six Vuzem Defendants. *See* Prior Order Re Claims 2 and 3 at 8-12. Judge Koh found that
7 Vuzem USA is subject to general personal jurisdiction based on factual allegations that it was a
8 California corporation prior to its dissolution. *See id.* This Court agrees. *See Ranza v. Nike, Inc.*,
9 793 F.3d 1059, 1069 (9th Cir. 2015) (“The paradigmatic locations where general jurisdiction is
10 appropriate over a corporation are its place of incorporation and its principal place of business.”);
11 Cal. Corp. Code § 2010(a) (“A corporation which is dissolved nevertheless continues to exist for
12 the purpose of . . . defending actions . . . against it[.]”).

13 Judge Koh found that ISM Vuzem d.o.o., ISM Vuzem USA, Robert Vuzem, and Ivan
14 Vuzem are subject to specific personal jurisdiction based on factual allegations establishing that
15 those defendants purposefully directed their activities to California and availed themselves of the
16 privilege of conducting business in California; that Claims 2 and 3 arise out of those forum-related
17 activities; and that exercise of jurisdiction over ISM Vuzem d.o.o., ISM Vuzem USA, Robert
18 Vuzem, and Ivan Vuzem is reasonable. *See* Prior Order Re Claims 2 and 3 at 10-12. This Court
19 agrees fully with Judge Koh’s analysis. The TAC alleges among other things that ISM Vuzem
20 d.o.o. and ISM Vuzem USA entered into contracts for construction of facilities at the Tesla
21 manufacturing plant in Fremont, California, and that Robert and Ivan Vuzem own and control the
22 operations of ISM Vuzem d.o.o. and ISM Vuzem USA. *See* TAC ¶¶ 16, 213. Those and similar
23 factual allegations in the TAC, which are taken as true for purposes of the motion for default
24 judgment, are sufficient to satisfy the requirements for specific personal jurisdiction under the
25 three-part test used in the Ninth Circuit. *See Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d
26 797, 802 (9th Cir. 2004).

27 Judge Koh found that the sixth of the Vuzem Defendants, HRID-MONT d.o.o., is not
28 subject to specific personal jurisdiction because the TAC contains no allegations that HRID-

1 MONT d.o.o. directed any relevant activities toward California. *See* Prior Order Re Claims 2 and
2 3 at 11. Papes argues in his current motion that this Court may exercise specific personal
3 jurisdiction over HRID-MONT d.o.o. under an alter ego theory. The alter ego theory of personal
4 jurisdiction was not addressed in Judge Koh’s prior order. *See id.* Personal jurisdiction over a
5 corporation may be established by showing that the corporation is the alter ego of other entities or
6 individuals as to whom personal jurisdiction exists. *See Am. Tel. & Tel. Co. v. Compagnie*
7 *Bruxelles Lambert*, 94 F.3d 586, 591 (9th Cir. 1996) (applying California law). The test is
8 whether (1) there is such unity of interest and ownership that the separate personalities of the
9 corporations no longer exist and (2) failure to disregard the corporations’ separate identities would
10 result in fraud or injustice. *See id.*

11 Here, the TAC alleges that “between Ivan Vuzem and Robert Vuzem and each of ISM
12 Vuzem d.o.o., ISM Vuzem USA, Inc., Vuzem USA, Inc., and HRID-MONT d.o.o. there is such a
13 unity of interest and ownership between the entities and their equitable owners that the separate
14 personalities of the entities and the owners do not in reality exist.” TAC ¶ 17. Papes also asserts
15 that Robert and Ivan Vuzem transferred assets between ISM Vuzem, d.o.o. and HRID-Mont
16 d.o.o., and that individuals were treated as employees of ISM Vuzem, d.o.o. and HRID-Mont
17 d.o.o. at different times. *See* Mot. for Def. Jud. at 9-10. The Court finds that it may exercise
18 personal jurisdiction over HRID-Mont d.o.o. based on allegations and evidence establishing that it
19 is an alter ego of the other Vuzem Defendants.

20 2. Service of Process

21 When a plaintiff requests default judgment, the court must assess whether the defendant
22 was properly served with notice of the action. *See Jackson v. Hayakawa*, 682 F.2d 1344, 1347
23 (9th Cir. 1982); *Solis v. Cardiografix*, No. 12-cv-01485, 2012 WL 3638548, at *2 (N.D. Cal. Aug.
24 22, 2012). Judge Koh previously reviewed the proofs of service filed in this case and found
25 deficiencies only with respect to service on Defendants Magna d.o.o. and We-Kr d.o.o. *See* Prior
26 Order Re Claims 2 and 3 at 12-14. Judge Koh expressly found that service on ISM Vuzem d.o.o.,
27 ISM Vuzem USA, Vuzem USA, Robert Vuzem, and Ivan Vuzem was compliant with Federal
28 Rule of Civil Procedure 4 and the Convention on the Service Abroad of Judicial and Extrajudicial

1 Documents in Civil and Commercial Matters (“Hague Service Convention”), 20 U.S.T. 361,
2 T.I.A.S. No. 6638. *See id.* The proof of service filed for HRID-Mont d.o.o. is substantially
3 identical to the proof of service filed for ISM Vuzem d.o.o. *Compare* POS re HRID-Mont d.o.o.,
4 ECF 364, *with* POS re ISM Vuzem d.o.o., ECF 363. This Court agrees with Judge Koh’s analysis
5 and finds no basis to revisit it. Accordingly, this Court finds that the service requirement is
6 satisfied with respect to all Vuzem Defendants.

7 **3. Eitel Factors**

8 Next, the Court considers whether default judgment against the Vuzem Defendants is
9 warranted under the *Eitel* factors.

10 **a. Factor 1 – Possibility of Prejudice**

11 Under the first *Eitel* factor, the Court finds that Papes would be prejudiced without a
12 default judgment against the Vuzem Defendants on Claims 2 and 3. Unless default judgment is
13 entered, Papes will have no other means of recourse on those claims. *See Ridola v. Chao*, 2018
14 WL 2287668, at *5 (N.D. Cal. May 18, 2018) (plaintiff prejudiced without default judgment
15 because she “would have no other means of recourse against Defendants for the damages caused
16 by their conduct”). The first factor therefore weighs in favor of granting default judgment.

17 **b. Factors 2 and 3 – Merits and Sufficiency of Claims**

18 The second and third *Eitel* factors address the merits and sufficiency of Papes’ claims as
19 pleaded in the TAC. Courts often analyze these two factors together. *See Dr. JKL Ltd. v. HPC IT*
20 *Educ. Ctr.*, 749 F. Supp. 2d 1038, 1048 (N.D. Cal. 2010) (“Under an *Eitel* analysis, the merits of
21 plaintiff’s substantive claims and the sufficiency of the complaint are often analyzed together.”).
22 “[T]he general rule is that well-pled allegations in the complaint regarding liability are deemed
23 true.” *Fair Hous. of Marin v. Combs*, 285 F.3d 899, 906 (9th Cir. 2002).

24 Claim 2 alleges failure to pay minimum wages under the FLSA, 29 U.S.C. § 206(a).
25 Claim 3 alleges failure to pay overtime wages under the FLSA, 29 U.S.C. § 207(a). “To establish
26 a minimum-wage or overtime violation of the FLSA, Plaintiff must establish three elements:
27 (1) she was an employee of Defendants, (2) she was covered under the FLSA, and (3) Defendants
28 failed to pay her minimum wage or overtime wages.” *Smith v. Nov. Bar N Grill LLC*, 441 F.

1 Supp. 3d 830, 834 (D. Ariz. 2020).

2 **i. Employee of Defendants**

3 With respect to the first element, the Ninth Circuit has held that “the definition of
4 ‘employer’ under the FLSA is not limited by the common law concept of ‘employer,’ but is to be
5 given an expansive interpretation in order to effectuate the FLSA’s broad remedial purposes.”
6 *Lambert v. Ackerley*, 180 F.3d 997, 1011-12 (9th Cir. 1999) (internal quotation marks and citation
7 omitted). For example, “[w]here an individual exercises control over the nature and structure of
8 the employment relationship, or economic control over the relationship, that individual is an
9 employer within the meaning of the Act, and is subject to liability.” *Id.* at 1012 (internal quotation
10 marks and citation omitted). Thus, in *Lambert*, the Ninth Circuit held that the chief executive
11 officer and the chief operating officer of the defendant corporations’ corporate parent were
12 “employers” who could be held liable under FLSA. *See id.*

13 The TAC alleges that each of the Vuzem Defendants was Papes’ employer within the
14 meaning of the FLSA. *See* TAC ¶ 241. The TAC alleges that Papes was employed by ISM
15 Vuzem, d.o.o., *see* TAC ¶ 60; each of the corporate Vuzem Defendants was the alter ego of the
16 others, *see* TAC ¶ 17; the corporate Vuzem Defendants shared laborers, *see* TAC ¶ 15; and Robert
17 and Ivan Vuzem controlled all aspects of the Corporate Vuzem Defendants, *see* TAC ¶¶ 10-11,
18 16-17. Those allegations, taken as true, establish that Papes was an employee of each of the
19 Vuzem Defendants for purposes of the FLSA.

20 **ii. Covered under the FLSA**

21 With respect to the second element, an individual is covered under the FLSA if the
22 individual “works for an enterprise engaged in commerce.” *Smith*, 441 F. Supp. 3d at 841. The
23 TAC alleges that the Vuzem Defendants are engaged in interstate commerce and/or the production
24 of goods for commerce, within the meaning of the FLSA. *See* TAC ¶ 241.

25 **iii. Failure to Pay Minimum or Overtime Wages**

26 With respect to the third element, the TAC alleges that the Vuzem Defendants “suffered
27 and permitted” Papes and others “to routinely work more than forty (40) hours a workweek while
28 paying them less than minimum wages and without overtime compensation.” TAC ¶¶ 239, 254.

1 These general and conclusory allegations are insufficient to establish that Papes was paid less than
2 minimum wages and was not paid earned overtime compensation. In order to establish a failure to
3 pay minimum wages in violation of the FLSA, the employee must show that in a given work
4 week, the total amount paid divided by the hours worked falls below the minimum wage set by the
5 statute. *See Durland v. Straub*, No. 3:20-CV-00031-IM, 2022 WL 2704169, at *5 (D. Or. July 12,
6 2022). In order to establish a failure to pay overtime wages, the employee must show that in a
7 given work week, the employee worked more than forty hours and was not paid time and a half for
8 all hours in excess of forty. *See id.* at *6. The TAC does not allege those specifics.

9 Judge Koh denied Papes' prior motion for default judgment on the basis that he failed to
10 provide adequate support for his minimum wages and overtime claims. *See* Prior Order Re
11 Claims 2 and 3 at 15-19. Judge Koh noted that Papes had attempted to provide the necessary
12 information in his motion, but had misstated the federal minimum wage as \$7.50 when in fact it
13 was \$7.25, had made inconsistent statements regarding when and how much he was paid, and had
14 improperly included transit time in his work hours. *See id.*

15 This Court finds that Papes once again has failed to provide adequate support for his
16 minimum wages and overtime claims under the FLSA. Papes submits a Further Supplemental
17 Declaration in support of his motion, to which are appended numerous spreadsheets and exchange
18 rate charts that he presumably believes support his claims. The spreadsheets and charts are not
19 summarized or totaled in the declaration. Other Courts have denied motions for default judgment
20 when confronted with similar unwieldy evidence offered in support of a minimum wage claim
21 under the FLSA. *See Durland*, 2022 WL 2704169, at *6 ("Further, this Court cannot sift through
22 pages of spreadsheets and pay stubs – some illegible – in an effort to infer whether a minimum
23 wage violation occurred.").

24 The Court observes that the Further Supplemental Declaration refers the Court to several
25 prior declarations and exhibits filed in this case, citing the ECF numbers for those documents and
26 apparently expecting the Court to track them down and print them for reference in connection with
27 the current motion. The Court's Standing Order Re Civil Cases expressly provides that " All
28 factual and legal bases for a party's position with respect to a motion must be presented in the

1 briefing on that motion. Arguments presented in earlier-filed briefs or documents may not be
2 incorporated by reference.” Standing Order § IV.D.

3 In short, Papes has failed to establish that his FLSA claims are meritorious through the
4 allegations of the TAC or through the Further Supplemental Declaration submitted in support of
5 his motion. The second and third factors therefore weigh against granting default judgment. “Of
6 all the *Eitel* factors, courts often consider the second and third factors to be the most important.”
7 *Vietnam Reform Party v. Viet Tan - Vietnam Reform Party*, 416 F. Supp. 3d 948, 962 (N.D. Cal.
8 2019) (internal quotation marks and citation omitted). Thus, Papes’ failure on these factors is fatal
9 to his motion for default judgment.

10 The Court nonetheless briefly addresses the remaining *Eitel* factors for the sake of
11 completeness.

12 **c. Factor 4 – Sum of Money at Stake**

13 Under the fourth *Eitel* factor, the Court must consider the amount of money at stake in
14 relation to the seriousness of the Vuzem Defendants’ conduct. “Default judgment is disfavored
15 where the sum of money at stake is too large or unreasonable in light of defendant’s actions.”
16 *Love v. Griffin*, No. 18-CV-00976-JSC, 2018 WL 4471073, at *5 (N.D. Cal. Aug. 20, 2018),
17 report and recommendation adopted, No. 18-CV-00976-JD, 2018 WL 4471149 (N.D. Cal. Sept.
18 17, 2018). As noted above, Papes’ declaration and attached spreadsheets and charts do not
19 provide a summary or total of unpaid wages claimed. In his motion, he asserts that he seeks
20 unpaid wages in the amount of \$39,693.46, plus liquidated damages in an amount equal to the
21 unpaid wages of \$39,693.46, plus pre-judgment interest. Had those damages been substantiated,
22 they would not have been too large or unreasonable in light of the Vuzem Defendants’ alleged
23 blatant violations of the FLSA and trafficking. The fourth *Eitel* factor favors default judgment.

24 **d. Factor 5 – Possibility of Dispute**

25 Under the fifth *Eitel* factor, the Court considers whether there is a possibility of a dispute
26 over any material fact. *See Love*, 2018 WL 4471073, at *5; *Ridola*, 2018 WL 2287668, at *13.
27 Because Papes has failed to establish an entitlement to unpaid minimum or overtime wages, there
28 is a possibility of dispute on his FLSA claims. This factor weighs against default judgment.

1 **e. Factor 6 – Reason for Default**

2 Under the sixth *Eitel* Factor, the Court considers whether the default was due to excusable
3 neglect. There is no indication on this record that the Vuzem Defendants’ failure to respond to
4 this action was due to excusable neglect. This factor favors default judgment.

5 **f. Factor 7 – Policy Favoring Decision on the Merits**

6 The seventh *Eitel* factor, which is the strong policy favoring decisions on the merits,
7 weighs against default judgment. In cases where the other *Eitel* factors weigh in favor of default
8 judgment, the seventh factor will not be an impediment to granting default judgment. *See Ridola*,
9 2018 WL 2287668, at *13 (“Although federal policy favors decision on the merits, Rule 55(b)(2)
10 permits entry of default judgment in situations, such as this, where a defendant refuses to
11 litigate.”). That is not the case here, however, where several of the *Eitel* factors weigh against
12 default judgment.

13 **g. Conclusion**

14 Only the first, fourth, and sixth of the *Eitel* factors weigh in favor of default judgment.
15 The second, third, fifth, and seventh factors weigh against default judgment. As noted above, the
16 second and third factors are the most important. Accordingly, Papes’ fourth motion for default
17 judgment on Claims 2 and 3 is DENIED. No further motions for default judgment on Claims 2
18 and 3 will be entertained.

19 **III. MOTION FOR RECONSIDERATION (ECF 615)**

20 Judge Koh entered an order granting in part and denying in part Papes’ motion for default
21 judgment on Claim 9 for trafficking and coerced labor under the TVPRA. *See* Prior Order Re
22 Claim 9, ECF 586. Specifically, Judge Koh granted the motion as to ISM Vuzem d.o.o., ISM
23 Vuzem USA, Inc., Robert Vuzem, and Ivan Vuzem, and denied the motion as to Vuzem USA, Inc.
24 and HRID-Mont, d.o.o. *See id.* at 31. Judge Koh awarded Papes \$305,500 in compensatory
25 damages and \$305,500 in punitive damages, for a total award of \$611,000 in damages. *See id.*
26 However, Judge Koh denied Papes’ request for attorneys’ fees for failure to provide any
27 supporting declarations or evidence that would support an award of attorneys’ fees. *See id.*

28 Papes has filed an administrative motion for leave to seek reconsideration, and a proposed

1 motion for reconsideration, of Judge Koh's ruling to the extent it may be construed as a bar to
2 filing a motion for attorneys' fees under Federal Rule of Civil Procedure 54. *See* Admin. Mot.,
3 ECF 615.

4 Rule 54(d) provides that a claim for attorneys' fees must be made by motion; that an
5 attorneys' fees motion must be filed within fourteen days after entry of judgment; and that such
6 motion must specify the statute, rule, or other grounds giving rise to an entitlement to attorneys'
7 fees. *See* Fed. R. Civ. P. 54(d)(2). Papes asserts that final judgment has not been entered in this
8 case, and thus the fourteen-day period to file a Rule 54 motion for attorneys' fees has not yet been
9 triggered. Papes also asserts that although his prior motion for default judgment on Claim 9 stated
10 that attorneys' fees should be awarded, that statement was not intended to be a Rule 54 motion for
11 attorneys' fees.

12 It appears that Judge Koh construed Papes' statement that attorneys' fees should be
13 awarded as a Rule 54 motion for attorneys' fees. In denying that motion, Judge Koh stated that
14 "Papes does not provides declarations or affidavits containing a statement of the services rendered
15 by each person for whom fees are requested and a brief description of their relevant qualifications
16 as is required by Civil Local Rule 54-5(b)(2)-(3)." Prior Order Re Claim 9 at 31.

17 Having reviewed the prior motion for default judgment on Claim 9, and Judge Koh's
18 ruling thereon, the Court finds that there was a misunderstanding as to whether the motion
19 included a Rule 54 motion for attorneys' fees. Under these circumstances, the Court finds that
20 reconsideration is appropriate under Civil Local Rule 7-9(b), permitting reconsideration based on
21 the court's manifest failure to consider material facts or legal arguments. *See* Civ. L.R. 7-9(b)(3).
22 Accordingly, Papes' administrative motion for leave to seek reconsideration, and motion for
23 reconsideration, are GRANTED. Papes is not precluded from filing a Rule 54(d) motion for
24 attorneys' fees in connection with Claim 9.

25 **IV. MOTION FOR ATTORNEYS' FEES AND COSTS UNDER RULE 54 (ECF 614)**

26 Papes has filed a motion under Rule 54(d), seeking an award of attorneys' fees and costs in
27 connection with Claims 2, 3, and 9. Papes is not entitled to attorneys' fees and costs in connection
28 with Claims 2 and 3, as the Court has denied his motion for default judgment on those claims.

1 The Court therefore considers Papes' Rule 54(d) motion only in connection with Claim 9 under
 2 the TVPRA, on which Judge Koh granted default judgment against ISM Vuzem d.o.o., ISM
 3 Vuzem USA, Inc., Robert Vuzem, and Ivan Vuzem in the total amount of \$611,000. The Court
 4 evaluates Papes' request for attorneys' fees in connection with Claim 9 herein. Papes' Bill of
 5 Costs will be addressed by the Clerk pursuant to Civil Local Rule 54-1.

6 **A. Legal Standard**

7 The TVPRA provides that a victim "may bring a civil action against the perpetrator . . .
 8 and may recover damages and reasonable attorneys fees." 18 U.S.C. § 1595(a). When calculating
 9 a reasonable attorneys' fee under federal law, courts in the Ninth Circuit follow "the 'lodestar'
 10 method, and the amount of that fee must be determined on the facts of each case." *Camacho v.*
 11 *Bridgeport Fin., Inc.*, 523 F.3d 973, 978 (9th Cir. 2008) (quoting *Ferland v. Conrad Credit Corp.*,
 12 244 F.3d 1145, 1149 n.4 (9th Cir. 2001)). Under the lodestar method, the most useful starting
 13 point "is the number of hours reasonably expended on the litigation multiplied by a reasonable
 14 hourly rate." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). The party seeking an award of fees
 15 should submit evidence supporting the hours worked and rates claimed. *Id.*

16 "In determining a reasonable hourly rate, the district court should be guided by the rate
 17 prevailing in the community for similar work performed by attorneys of comparable skill,
 18 experience, and reputation." *Chalmers v. City of Los Angeles*, 796 F.2d 1205, 1210–11 (9th Cir.
 19 1986). "Generally, the relevant community is the forum in which the district court sits." *Barjon v.*
 20 *Dalton*, 132 F.3d 496, 500 (9th Cir. 1997). The fee applicant bears the burden of producing
 21 evidence, other than declarations of interested counsel, that the requested rates are in line with
 22 those prevailing in the community for similar services by lawyers of reasonably comparable skill,
 23 experience, and reputation. *See Blum*, 465 U.S. at 896 n.11. Further, the district court should
 24 exclude hours that were not reasonably expended. *See Hensley*, 461 U.S. at 434.

25 **B. Discussion**

26 Papes' counsel, William C. Dresser, has provided a declaration in support of the motion for
 27 attorneys' fees. *See Dresser Decl.*, ECF 614-2. The declaration includes billing records and
 28 summary charts of fees by major tasks. *See id.* Unfortunately, the Court cannot discern from the

1 declaration and appended charts which hours were expended on Claim 9, as to which fees are
2 recoverable, as opposed to Claims 2 and 3, as to which fees are not recoverable. For that reason,
3 the Court has no option but to deny Papes' motion for attorneys' fees without prejudice. Papes
4 may file a renewed motion for attorneys' fees, limited to those fees incurred in connection with
5 Claim 9, by June 20, 2023. Such renewed motion need not include the underlying billing records
6 previously submitted to the Court, but shall include a declaration of counsel and a summary chart
7 showing the hours expended on Claim 9 by biller and task. Papes need not reserve a hearing date
8 for a renewed fees motions; any renewed motion will be decided on the papers.

9 Papes' Rule 54 motion for attorneys' fees is DENIED WITHOUT PREJUDICE.

10 **V. ORDER**

- 11 (1) Papes' fourth motion for default judgment on Claims 2 and 3 (ECF 613) is
12 DENIED. No further motions for default judgment on Claims 2 and 3 will be
13 entertained.
- 14 (2) Papes' administrative motion for leave to file a motion for reconsideration, and his
15 motion for reconsideration (ECF 615), are GRANTED.
- 16 (3) Papes' Rule 54 motion for attorneys' fees and costs (ECF 614) is DENIED
17 WITHOUT PREJUDICE. Papes may file a renewed motion for attorneys' fees,
18 limited to those fees incurred in connection with Claim 9, by June 20, 2023.
- 19 (4) This order terminates ECF 613, 614, and 615.

20
21 Dated: May 30, 2023

22 
23 _____
24 BETH LABSON FREEMAN
25 United States District Judge
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