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

STJEPAN NOVOSELAC, et al.,

Plaintiffs,

v.

ISM VUZEM D.O.O., et al,

Defendants.

Case No. 21-cv-08654-BLF

**ORDER GRANTING IN PART
MOTION FOR DEFAULT
JUDGMENT; GRANTING MOTION
FOR ATTORNEYS' FEES; AND
DIRECTING MOVING PARTIES'
COUNSEL TO SUBMIT
SUPPLEMENTAL DECLARATION**

[Re: ECF 59, 61]

Plaintiffs Stjepan Novoselac (“Novoselac”), Grega Povh (“Povh”), Davor Hudin (“Hudin”), and Marijan Lazar (“Lazar”) allege that they were transported to the United States from their home countries of Bosnia and Herzogovenia, the Republic of Slovenia, and Croatia to provide cheap labor to American companies. *See generally* Compl., ECF 1-1. They assert federal and state wage and hour claims against four Slovenian individuals and entities who employed them and contracted their labor to American companies: Defendants ISM Vuzem d.o.o., HRID-Mont, d.o.o., Robert Vuzem, and Ivan Vuzem (“the Vuzem Defendants”). *See id.* They also asserts claims against Defendants Tesla, Inc. (“Tesla”) and its general contractor, Eisenmann Corporation (“Eisenmann”), based on labor Plaintiffs allegedly performed at Tesla’s facility in Fremont, California. *See id.*

1 Tesla and Eisenmann have been dismissed from the suit with prejudice. *See* Order, ECF
2 52. The Vuzem Defendants failed to respond to the complaint and the Clerk entered default
3 against them. *See* Clerk’s Entries of Default, ECF 37-40. The Court thereafter set a deadline for
4 Plaintiffs to file motions for default judgment against the Vuzem Defendants. *See* Orders, ECF
5 52, 55. The Court advised that failure to file a motion for default judgment would result in
6 dismissal without further notice for failure to prosecute. *See id.*

7 Three of the four plaintiffs – Novoselac, Povh, and Hudin – timely filed the present
8 motions for default judgment and attorneys’ fees against the Vuzem Defendants. *See* Mot. for
9 Default Judgment, ECF 59; Mot. for Attorneys’ Fees, ECF 61. The Court finds the motions
10 suitable for decision without oral argument. *See* Civ. L.R. 7-1(b). For the reasons discussed
11 below, the motion for default judgment is GRANTED IN PART and motion for attorneys’ fees is
12 GRANTED.

13 The fourth plaintiff, Lazar, did not file a motion for default judgment. In conjunction with
14 this order, the Court will issue a separate Order to Show Cause why Lazar’s claims should not be
15 dismissed for failure to prosecute.

16 **I. BACKGROUND**

17 Plaintiffs filed this suit in the Alameda County Superior Court in August 2021. *See*
18 Compl., ECF 1-1. Plaintiffs are residents of Bosnia and Herzogovenia, the Republic of Slovenia,
19 and Croatia. *See id.* ¶ 1. They allege that the Vuzem Defendants, all Slovenia-based companies
20 and individuals, hired Plaintiffs to provide labor to American companies in the United States. *See*
21 *id.* ¶¶ 2-4, 7-9, 16-17. As described below, a substantial portion of that labor allegedly was
22 performed in California.

23 According to Plaintiffs, the Vuzem Defendants contracted with Tesla and its general
24 contractor, Eisenmann, for Plaintiffs’ labor services on a construction project at Tesla’s facility in
25 Fremont, California. *See* Compl. ¶¶ 16, 48. Plaintiffs worked at the Tesla facility at various times
26 between November 2014 and June 2016. *See id.* ¶ 17. Plaintiffs allege that while in California
27 they lived in assigned housing units, were picked up by a van at 6:30 a.m. every Monday through
28 Saturday for transport to the Tesla facility, and were returned to their housing units after 6:00 p.m.

1 every Monday through Friday and after 4:00 p.m. every Saturday. *See id.* ¶ 53. Plaintiffs also
2 worked many Sundays. *See id.* Plaintiffs claim that they were paid a flat rate per month, in
3 violation of federal and state laws requiring payment of minimum wages and overtime wages. *See*
4 *id.* ¶¶ 26, 38, 54-57, 61. Plaintiffs also claim that they were not given rest periods, wage
5 statements, or waiting time penalties required under California state law. *See id.* ¶¶ 65, 70, 81-82.

6 Based on these allegations, Plaintiffs filed the complaint in this action asserting the
7 following claims against the Vuzem Defendants, Eisenmann, and Tesla: (1) failure to pay
8 minimum wages in violation of the Fair Labor Standards Act (“FLSA”); (2) failure to pay
9 overtime wages in violation of the FLSA; (3) failure to pay minimum wages in violation of
10 California law; (4) failure to pay overtime wages in violation of California law; (5) failure to
11 provide rest periods in violation of California law; (6) failure to provide accurate wage statements
12 in violation of California law; and (7) failure to pay waiting time penalties in violation of
13 California law.

14 Defendants Eisenmann and Tesla removed the action to federal district court on November
15 5, 2021 on the basis of federal question jurisdiction, as the complaint asserts claims under the
16 federal FLSA. *See* Not. of Removal, ECF 1. Eisenmann and Tesla filed a motion to dismiss the
17 complaint that was granted with leave to amend. *See* Order, ECF 51. Plaintiffs did not amend the
18 complaint within the deadline set by the Court, which resulted in the dismissal of Eisenmann and
19 Tesla from the suit with prejudice. *See* Order, ECF 52. The Vuzem Defendants failed to respond
20 to the complaint, and the Clerk entered default against them. *See* Clerk’s Entries of Default, ECF
21 37-40. Plaintiffs Novoselac, Povh, and Hudin now seek default judgment and attorneys’ fees
22 against the Vuzem Defendants.

23 **II. MOTION FOR DEFAULT JUDGMENT (ECF 59)**

24 Plaintiffs Novoselac, Povh, and Hudin (“Moving Parties”) seek default judgment against
25 the Vuzem Defendants on all seven claims in the complaint.

26 **A. Legal Standard on Default Judgment**

27 Default may be entered against a party who fails to plead or otherwise defend an action,
28 who is neither a minor nor an incompetent person, and against whom a judgment for affirmative

1 relief is sought. Fed. R. Civ. P. 55(a). After entry of default, a court may, in its discretion, enter
2 default judgment. Fed. R. Civ. P. 55(b)(2); *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir.
3 1980).

4 In deciding whether to enter default judgment, a court may consider the following factors:
5 (1) the possibility of prejudice to the plaintiff; (2) the merits of the plaintiff’s substantive claims;
6 (3) the sufficiency of the complaint; (4) the sum of money at stake in the action; (5) the possibility
7 of a dispute concerning material facts; (6) whether the default was due to excusable neglect; and
8 (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the
9 merits. *See Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986).

10 In considering these factors, all factual allegations in the plaintiff’s complaint are taken as
11 true, except those related to damages. *See TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-
12 18 (9th Cir. 1987). When the damages claimed are not readily ascertainable from the pleadings
13 and the record, the court may either conduct an evidentiary hearing or proceed on documentary
14 evidence submitted by the plaintiff. *See Johnson v. Garlic Farm Truck Ctr. LLC*, 2021 WL
15 2457154, at *2 (N.D. Cal. Jun. 16, 2021).

16 **B. Discussion**

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

21 **1. Jurisdiction**

22 The Court has federal question jurisdiction over Claims 1 and 2 for violations of the FLSA,
23 because those claims are brought under a federal statute. *See* 28 U.S.C. § 1331 (“The district
24 courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or
25 treaties of the United States.”). The Court has supplemental jurisdiction over Claims 3-7, asserted
26 under state law, as those claims arise out of the same wage and hour violations that form the basis
27 of the FLSA claims. *See* 28 U.S.C. § 1367(a) (“[I]n any civil action of which the district courts
28 have original jurisdiction, the district courts shall have supplemental jurisdiction over all other

1 claims that are so related to claims in the action within such original jurisdiction that they form
2 part of the same case or controversy under Article III of the United States Constitution.”).

3 The Court has specific personal jurisdiction over the Vuzem Defendants based on factual
4 allegations which, when accepted as true, establish that: the Vuzem Defendants purposefully
5 directed their activities to California and availed themselves of the privilege of conducting
6 business in California; the claims of the complaint arise out of those forum-related activities; and
7 exercise of jurisdiction over the Vuzem Defendants is reasonable. *See Schwarzenegger v. Fred*
8 *Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004) (setting forth requirements for specific
9 personal jurisdiction). The complaint alleges among other things that ISM Vuzem d.o.o. entered
10 into contracts with Eisenmann and Tesla in California for Plaintiffs’ labor services at Tesla’s
11 facility in Fremont, California. *See* Compl. ¶ 16. The complaint also alleges that Robert and Ivan
12 Vuzem own and control the operations of ISM Vuzem d.o.o. *See id.* ¶¶ 8-9. Robert and Ivan
13 Vuzem allegedly traveled to the worksite at the Tesla facility in Fremont, California and
14 corresponded with Plaintiffs regarding their wages. *See id.* ¶¶ 15, 23.

15 In addition, the complaint alleges that “between Ivan Vuzem and Robert Vuzem and each
16 of ISM Vuzem d.o.o., . . . and HRID-MONT d.o.o. there is such a unity of interest and ownership
17 between the entities and their equitable owners that the separate personalities of the entities and
18 the owners do not in reality exist.” *See* Compl. ¶ 9. Personal jurisdiction over a corporation may
19 be established by showing that the corporation is the alter ego of other entities or individuals as to
20 whom personal jurisdiction exists. *See Am. Tel. & Tel. Co. v. Compagnie Bruxelles Lambert*, 94
21 F.3d 586, 591 (9th Cir. 1996) (applying California law). The test is whether (1) there is such unity
22 of interest and ownership that the separate personalities of the corporations no longer exist and (2)
23 failure to disregard the corporations’ separate identities would result in fraud or injustice. *See id.*
24 Under this test, ISM Vuzem d.o.o.’s California contacts may be attributed to HRID-MONT d.o.o.

25 Based on these alleged facts, the Court finds that the Vuzem Defendants’ contacts with
26 California are sufficient to satisfy the requirements for specific personal jurisdiction under the
27 *Schwarzenegger* test discussed above. *See Schwarzenegger*, 374 F.3d at 802.

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1 **2. Service of Process**

2 When a plaintiff requests default judgment, the court must assess whether the defendant
3 was properly served with notice of the action. *See Jackson v. Hayakawa*, 682 F.2d 1344, 1347
4 (9th Cir. 1982); *Solis v. Cardiografix*, No. 12-cv-01485, 2012 WL 3638548, at *2 (N.D. Cal. Aug.
5 22, 2012). The Court has reviewed the proofs of service filed by Plaintiffs with respect to the
6 Vuzem Defendants. *See* POS, ECF 27-30. It appears that service was compliant with Federal
7 Rules of Civil Procedure 4, which permits service on individuals and companies in a foreign
8 country “by any internationally agreed means of service that is reasonably calculated to give
9 notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and
10 Extrajudicial Documents.” Fed. R. Civ. P. 4(f)(1), (h)(2). The proofs of service represent that the
11 Vuzem Defendants were served pursuant to the Hague Convention. *See* POS, ECF 27-30. The
12 Court therefore finds that the Vuzem Defendants were properly served with notice of this action.

13 **3. Eitel Factors**

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

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

17 Under the first *Eitel* factor, the Court finds that Moving Parties would be prejudiced
18 without a default judgment against the Vuzem Defendants. Unless default judgment is entered,
19 Moving Parties will have no other means of recourse on their claims. *See Ridola v. Chao*, 2018
20 WL 2287668, at *5 (N.D. Cal. May 18, 2018) (plaintiff prejudiced without default judgment
21 because she “would have no other means of recourse against Defendants for the damages caused
22 by their conduct”). The first factor therefore weighs in favor of granting default judgment.

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

24 The second and third *Eitel* factors address the merits and sufficiency of Moving Parties’
25 claims. Courts often analyze these two factors together. *See Dr. JKL Ltd. v. HPC IT Educ. Ctr.*,
26 749 F. Supp. 2d 1038, 1048 (N.D. Cal. 2010) (“Under an *Eitel* analysis, the merits of plaintiff’s
27 substantive claims and the sufficiency of the complaint are often analyzed together.”). “[T]he
28 general rule is that well-pled allegations in the complaint regarding liability are deemed true.”

1 *Fair Hous. of Marin v. Combs*, 285 F.3d 899, 906 (9th Cir. 2002).

2 The Court finds that these factors are satisfied as to all seven claims in the complaint, as
3 discussed below. “Of all the *Eitel* factors, courts often consider the second and third factors to be
4 the most important.” *Vietnam Reform Party v. Viet Tan - Vietnam Reform Party*, 416 F. Supp. 3d
5 948, 962 (N.D. Cal. 2019) (internal quotation marks and citation omitted). Thus, Moving Parties’
6 satisfaction of the second and third *Eitel* factors weighs strongly in favor of default judgment.

7 **i. Claims 1 and 2 – Unpaid Wages under FLSA**

8 Claim 1 alleges failure to pay minimum wages under the FLSA, 29 U.S.C. § 206(a), which
9 provides for a minimum wage of \$7.25 per hour for the time period in question. Claim 2 alleges
10 failure to pay overtime wages under the FLSA, 29 U.S.C. § 207(a), which provides for overtime
11 wages of not less than time and a half for hours worked in excess of 40 hours in a workweek. “To
12 establish a minimum-wage or overtime violation of the FLSA, Plaintiff must establish three
13 elements: (1) she was an employee of Defendants, (2) she was covered under the FLSA, and (3)
14 Defendants failed to pay her minimum wage or overtime wages.” *Smith v. Nov. Bar N Grill LLC*,
15 441 F. Supp. 3d 830, 834 (D. Ariz. 2020).

16 With respect to the first element, that the plaintiff was an employee of the defendant, the
17 Ninth Circuit has held that “the definition of ‘employer’ under the FLSA is not limited by the
18 common law concept of ‘employer,’ but is to be given an expansive interpretation in order to
19 effectuate the FLSA’s broad remedial purposes.” *Lambert v. Ackerley*, 180 F.3d 997, 1011-12
20 (9th Cir. 1999) (internal quotation marks and citation omitted). For example, “[w]here an
21 individual exercises control over the nature and structure of the employment relationship, or
22 economic control over the relationship, that individual is an employer within the meaning of the
23 Act, and is subject to liability.” *Id.* at 1012 (internal quotation marks and citation omitted). Thus,
24 in *Lambert*, the Ninth Circuit held that the chief executive officer and the chief operating officer of
25 the defendant corporations’ corporate parent were “employers” who could be held liable under
26 FLSA. *See id.* Here, the complaint alleges that each of the Vuzem Defendants was an employer
27 of Moving Parties within the meaning of the FLSA. *See* Compl. ¶¶ 9, 29, 33. Moving Parties
28 allegedly were employed by ISM Vuzem, d.o.o., *see id.* ¶¶ 31-32, Robert and Ivan Vuzem

1 allegedly exercised control over the employment relationship, *see id.* ¶ 33, and all Vuzem
2 Defendants, including HRID-Mont d.o.o., allegedly were alter egos of each other, *See id.* ¶ 9. The
3 Court finds the complaint’s allegations, taken as true, to be sufficient to establish the first element
4 of the FLSA claims.

5 With respect to the second element, that the plaintiff was covered under the FLSA, an
6 individual is covered under the FLSA if the individual “works for an enterprise engaged in
7 commerce.” *Smith*, 441 F. Supp. 3d at 841. The complaint alleges that the Vuzem Defendants
8 were engaged in interstate commerce and/or the production of goods for commerce, within the
9 meaning of the FLSA. *See* Compl. ¶ 29. The Court finds this allegation sufficient to satisfy the
10 second element of the FLSA claims.

11 With respect to the third element, that the defendant failed to pay the plaintiff minimum or
12 overtime wages, the complaint alleges that: “Plaintiffs and each of them routinely worked in
13 excess of forty (40) hours in a workweek without receiving either minimum wages or overtime
14 compensation for services and labor provided in the United States,” Compl. ¶ 26; “Defendant ISM
15 Vuzem, d.o.o. willfully engaged in a pattern of violating the FLSA by knowingly failing to pay its
16 Full Time Employees, including Plaintiffs, minimum wages,” *id.* ¶ 31; and “Defendant ISM
17 Vuzem, d.o.o. suffered and permitted Plaintiffs to routinely work more than forty (40) hours a
18 workweek while paying them less than minimum wages and without overtime compensation,” *id.*
19 ¶ 38. While these allegations set forth Moving Parties’ theory of recovery and the general outlines
20 of their claims, they are not sufficient on their own. However, as discussed below, the allegations
21 of the complaint combined with evidence in the record is sufficient to satisfy the second and third
22 *Eitel* factors.

23 In order to establish a failure to pay minimum wages in violation of the FLSA, the
24 employee must show that in a given work week, the total amount paid divided by the hours
25 worked falls below the minimum wage set by the statute. *See Durland v. Straub*, No. 3:20-CV-
26 00031-IM, 2022 WL 2704169, at *5 (D. Or. July 12, 2022). In order to establish a failure to pay
27 overtime wages, the employee must show that in a given work week, the employee worked more
28 than forty hours and was not paid time and a half for all hours in excess of forty. *See id.* at *6.

1 Those necessary specifics are supplied by the declaration of Moving Parties’ counsel, William C.
2 Dresser and documents attached thereto. *See* Dresser Decl., ECF 60. Counsel provides wage
3 spreadsheets for each of the Moving Parties, broken down by workweek, showing: hours worked
4 up to 40 hours per week; hours worked in excess of 40 hours per week; wages paid; regular wages
5 that should have been paid for the first 40 hours per week using the FLSA minimum base pay rate
6 of \$7.25 per hour; and overtime wages that should have been paid for hours worked in excess of
7 40 hours per week. *See id.* ¶ 27 and Tables A.1, A.2, A.3, B.1, B.2, B.3. The meaning of those
8 spreadsheets is explained by counsel’s declaration, and counsel also provides a table of the total
9 amount of unpaid wages sought by each of the Moving Parties under the FLSA. *See id.* ¶ 27 and
10 Table G.

11 The Court finds that the allegations of the complaint, combined with the declaration of
12 counsel and the evidence attached thereto, establish the merits and sufficiency of Moving Parties’
13 claims for minimum wages and overtime wages under the FLSA.

14 **ii. Claims 3 and 4 – Unpaid Wages under California law**

15 Claim 3 alleges failure to pay minimum wages under California Labor Code § 1182.12,
16 which provides in relevant part that “on and after July 1, 2014, the minimum wage for all
17 industries shall be not less than nine dollars (\$9) per hour, and on and after January 1, 2016, the
18 minimum wage for all industries shall be not less than ten dollars (\$10) per hour.” Cal. Lab. Code
19 § 1182.12(a). Claim 4 alleges failure to pay overtime wages under California Labor Code § 510,
20 which provides for overtime wages of not less than time and a half for hours worked in excess of
21 40 hours in a workweek. Cal. Lab. Code § 510(a). Under California Labor Code § 1194, “any
22 employee receiving less than the legal minimum wage or the legal overtime compensation
23 applicable to the employee is entitled to recover in a civil action the unpaid balance of the full
24 amount of this minimum wage or overtime compensation, including interest thereon, reasonable
25 attorney’s fees, and costs of suit.” Cal. Lab. Code § 1194(a).

26 The definition of employer for purposes of the California Labor Code is slightly different
27 from the definition of employer under the FLSA. *See Martinez v. Combs*, 49 Cal. 4th 35, 67
28 (2010). Under California law, an employer is one who “employs or exercises control over the

1 wages, hours, or working conditions of any person.” *Id.* The same alleged facts that satisfy the
2 definition of employer for purposes of the FLSA also satisfy the definition of employer under
3 California law – Moving Parties allegedly were hired and directly employed by ISM Vuzem,
4 d.o.o., *see* Compl. ¶¶ 31-32, Robert and Ivan Vuzem allegedly exercised control over the
5 employment relationship, *see id.* ¶ 33, and all Vuzem Defendants, including HRID-Mont d.o.o.,
6 allegedly were alter egos of each other, *See id.* ¶ 9. Moreover, the declaration of Moving Parties’
7 counsel and attached evidence show that Moving Parties were not paid the minimum wages and
8 overtime wages required under California law when they worked at the Tesla facility in Fremont,
9 California. *See* Dresser Decl. ¶ 27 and Tables C.1, C.2, C.3, and G.

10 The Court finds that the allegations of the complaint, combined with the declaration of
11 counsel and the evidence attached thereto, establish the merits and sufficiency of Moving Parties’
12 claims for minimum wages and overtime wages under California law.

13 **iii. Claim 5 – Rest Periods under California Law**

14 Claim 5 is for failure to provide rest periods in violation of California Labor Code §§ 226.7
15 and 512 and applicable wages orders. “[E]mployers who unlawfully denied their employees a
16 meal or rest period on any given day must pay the employees an additional hour of pay at their
17 regular rate.” *Naranjo v. Spectrum Sec. Servs., Inc.*, 13 Cal. 5th 93, 105 (2022) (internal quotation
18 marks and citations omitted). The complaint alleges that Plaintiffs were not provided all the rest
19 periods to which they were entitled while working at the Tesla facility. *See* Compl. ¶ 65. The
20 declaration of Moving Parties’ counsel and attached evidence show that Moving Parties were not
21 given required rest periods when they worked at the Tesla facility in Fremont, California, and a
22 calculation of the rest period compensation due to each Moving Party is provided. *See* Dresser
23 Decl. ¶ 27 and Tables C.1, C.2, C.3, and G.

24 The Court finds that the allegations of the complaint, combined with the declaration of
25 counsel and the evidence attached thereto, establish the merits and sufficiency of Moving Parties’
26 claim for denial of rest periods under California law.

27 **iv. Claim 6 – Wage Statements under California Law**

28 Claim 6 is for failure to provide accurate wage statements in violation of California Labor

1 Code §§ 226 and 1174. California Labor Code § 226 requires employers to provide employees
2 with accurate itemized statements in writing showing, among other things, their gross and net
3 wages earned, total hours worked, all deductions, the dates included in the pay period, and the
4 identifying information of the employee and employer, and “all applicable hourly rates in effect
5 during the pay period and the corresponding number of hours worked at each hourly rate by the
6 employee.” Cal. Lab. Code § 226(a). These statements must be provided on a semimonthly basis
7 or at the time of each wage payment. *See id.* “An employee suffering injury as a result of a
8 knowing and intentional failure by an employer to comply with subdivision (a) is entitled to
9 recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a
10 violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent
11 pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to
12 an award of costs and reasonable attorney’s fees.” Cal. Lab. Code § 226(e).

13 The complaint alleges that the Vuzem Defendants did not provide Plaintiffs with any wage
14 statements. *See* Compl. ¶ 70. The declaration of Moving Parties’ counsel and attached evidence
15 provide a calculation of the recovery due to each Moving Party for the failure to provide wage
16 statements. *See* Dresser Decl. ¶ 27 and Tables E and G. The Court finds that the allegations of the
17 complaint, combined with the declaration of counsel and the evidence attached thereto, establish
18 the merits and sufficiency of Moving Parties’ claim for failure to provide wage statements under
19 California law.

20 **v. Claim 7 – Waiting Time Penalties under California Law**

21 Claim 7 is for failure to pay waiting time penalties in violation of California Labor Code §
22 203, which provides that when an employer fails to pay all compensation due at the termination of
23 employment, “the wages of the employee shall continue as a penalty from the due date thereof at
24 the same rate until paid or until an action therefor is commenced; but the wages shall not continue
25 for more than 30 days.” Cal. Lab. Code § 203(a). The complaint alleges that the Vuzem
26 Defendants failed to pay wages due, including minimum wages and overtime wages, to Plaintiffs
27 following termination of their employment. *See* Compl. ¶¶ 81-82. The declaration of Moving
28 Parties’ counsel and attached evidence provide a calculation of the recovery due to each Moving

1 Party for 30 days of waiting time penalties. *See* Dresser Decl. ¶ 27 and Tables F and G. The
2 Court finds that the allegations of the complaint, combined with the declaration of counsel and the
3 evidence attached thereto, establish the merits and sufficiency of Moving Parties’ claim for
4 waiting time penalties under California law.

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

6 Under the fourth *Eitel* factor, the Court must consider the amount of money at stake in
7 relation to the seriousness of the Vuzem Defendants’ conduct. “Default judgment is disfavored
8 where the sum of money at stake is too large or unreasonable in light of defendant’s actions.”
9 *Love v. Griffin*, No. 18-CV-00976-JSC, 2018 WL 4471073, at *5 (N.D. Cal. Aug. 20, 2018),
10 report and recommendation adopted, No. 18-CV-00976-JD, 2018 WL 4471149 (N.D. Cal. Sept.
11 17, 2018). Here, Moving Parties seek the following amounts: \$139,493.52 for Novoselac,
12 \$78,465.40 for Povh, and \$132,443.75 for Hudin. *See* Dresser Decl. ¶ 27 and Table G. In the
13 Court’s view, those amounts are not too large or unreasonable in light of the Vuzem Defendants’
14 alleged blatant violations of the FLSA and California wage and hour laws. The fourth *Eitel* factor
15 favors default judgment.

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

17 Under the fifth *Eitel* factor, the Court considers whether there is a possibility of a dispute
18 over any material fact. *See Love*, 2018 WL 4471073, at *5; *Ridola*, 2018 WL 2287668, at *13.
19 Because the Vuzem Defendants have not appeared, they are not entitled to dispute the facts
20 established by Moving Parties. This factor favors default judgment.

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

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

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

26 The seventh *Eitel* factor, which is the strong policy favoring decisions on the merits,
27 weighs against default judgment. In cases where the other *Eitel* factors weigh in favor of default
28 judgment, the seventh factor will not be an impediment to granting default judgment. *See Ridola*,

1 2018 WL 2287668, at *13 (“Although federal policy favors decision on the merits, Rule 55(b)(2)
2 permits entry of default judgment in situations, such as this, where a defendant refuses to
3 litigate.”).

4 **g. Conclusion**

5 All of the *Eitel* factors except the seventh factor weigh in favor of default judgment. The
6 second and third factors, which are the most important, strongly favor default judgment.
7 Accordingly, Moving Parties’ motion for default judgment against the Vuzem Defendants is
8 GRANTED as to Claims 1-7 of the complaint.

9 **4. Relief Requested**

10 Having concluded that Moving Parties are entitled to default judgment, the Court must
11 consider whether they have established that they are entitled to the relief requested. “Upon entry
12 of default, a plaintiff is required to prove the amount of his damages, because neither the default
13 nor the allegations in the complaint can establish the amount of damages.” *Lasheen v. Embassy of*
14 *The Arab Republic of Egypt*, 625 F. App’x 338, 341 (9th Cir. 2015). “The district court may
15 determine the amount of damages without an evidentiary hearing where the amount claimed is a
16 liquidated sum or capable of mathematical calculation.” *Id.* (internal quotation marks and citation
17 omitted).

18 Moving Parties seek damages, interest, and penalties the following amounts: \$139,493.52
19 for Novoselac, \$78,465.40 for Povh, and \$132,443.75 for Hudin. *See* Dresser Decl. ¶ 27 and
20 Table G. As discussed above, Moving Parties’ counsel has submitted a declaration along with
21 detailed wage statements, explanations as to how each element of damages was calculated, and
22 summaries of the total damages requested by each Moving Party. *See* Dresser Decl. ¶ 27 and
23 Tables A.1-G. For the most part, the damages calculations are straightforward and need not be
24 addressed in detail here. The Court discusses in depth only a few aspects of the request for relief,
25 and thereafter provides a claim-by-claim summary of its ruling on the motion.

26 For the following reasons and as detailed below, the motion for default judgment is
27 GRANTED IN PART AND DENIED IN PART.

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a. No Duplication of Wage Claims under FLSA and State Law

Claims 1 and 2 request unpaid minimum and overtime wages under the FLSA, while Claims 3 and 4 request unpaid minimum and overtime wages under California state law. Moving parties excluded their California (Tesla) wages from the calculation of damages under the FLSA to avoid a double recovery. *See* Dresser Decl. ¶ 27 and Table G.

b. Travel Time

The wages claimed by Moving Parties under both the FLSA and California law include time they spent traveling by van between their assigned housing sites and their work sites. Under federal law, “[t]ime spent by an employee in travel as part of his principal activity, such as travel from job site to job site during the workday, must be counted as hours worked.” 29 C.F.R. § 785.38. “Where an employee is required to report at a meeting place to receive instructions or to perform other work there, or to pick up and to carry tools, the travel from the designated place to the work place is part of the day’s work, and must be counted as hours worked regardless of contract, custom, or practice.” *Id.* Moving Parties submit declarations stating that once in the United States, they were transported between assigned housing to construction sites by vans that were driven by their supervisors; the supervisors gave Moving Parties work assignments and instructions in the vans; Moving Parties carried tools in the vans; and travel in the vans was required as part of the job. *See* Novoselac Decl. ¶¶ 16-24, ECF 59-1; Povh Decl. ¶¶ 16-24, ECF 59-2; Hudin Decl. ¶¶ 16-24, ECF 59-3. Other district courts in the Ninth Circuit have granted default judgment on FLSA wage claims for travel time under § 785.38 based on similar facts. *See, e.g., Durland v. Straub*, No. 3:20-CV-00031-IM, 2022 WL 2704169, at *4 & n.6 (D. Or. July 12, 2022) (granting default judgment where workers were required to gather at the shop to get instructions and supplies and then ride together to the work site). This Court likewise concludes that Moving Parties’ evidence is sufficient to establish that their van travel time must be counted as hours worked for their FLSA claims.

Under California law, whether travel time is compensable depends on “[t]he level of the employer’s control over its employees.” *Morillion v. Royal Packing Co.*, 22 Cal. 4th 575, 587 (2000). In *Morillion*, the California Supreme Court found that the time agricultural employees

1 were required to spend traveling on their employer’s buses was compensable because they were
2 subject to control of their employer. *See id.* at 578. The *Morillion* court held that, “When an
3 employer requires its employees to meet at designated places to take its buses to work and
4 prohibits them from taking their own transportation, these employees are subject to the control of
5 an employer, and their time spent traveling on the buses is compensable as hours worked.” *Id.* at
6 587 (internal quotation marks and citation omitted). As discussed above, Moving Parties have
7 submitted declarations stating that they were required to take company vans between their
8 assigned housing units and their work sites, that their supervisors gave them instructions during
9 that travel, and that travel on the company vans was required. *See* Novoselac Decl. ¶¶ 16-24;
10 Povh Decl. ¶¶ 16-24; Hudin Decl. ¶¶ 16-24. The Court finds that this evidence is sufficient to
11 establish that the van travel time is compensable under California law.

12 **c. Liquidated Damages**

13 Under the FLSA, “[a]ny employer who violates the provisions of section 206 or section
14 207 of this title shall be liable to the employee or employees affected in the amount of their unpaid
15 minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional
16 equal amount as liquidated damages.” 29 U.S.C.A. § 216(b). For Claims 1 and 2 brought under
17 the FLSA, Moving Parties properly seek liquidated damages equal to the total recoverable unpaid
18 minimum and overtime wages. *See* Dresser Decl. ¶ 27 and Table G.

19 Under California law, “[i]n any action . . . to recover wages because of the payment of a
20 wage less than the minimum wage fixed by an order of the commission or by statute, an employee
21 shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid
22 and interest thereon.” Cal. Lab. Code § 1194.2(a). However, “[n]othing in this subdivision shall
23 be construed to authorize the recovery of liquidated damages for failure to pay overtime
24 compensation.” *Id.* Moving Parties properly seek liquidated damages on Claim 3 for unpaid
25 minimum wages under state law. However, they also seek liquidated damages on Claim 4 for
26 overtime wages under state law, which are unavailable. Unfortunately, Moving Parties’
27 calculation of liquidated damages under state law combines Claims 3 and 4. *See* Dresser Decl. ¶
28 27 and Table G. The Court will direct counsel to file a supplemental declaration recalculating

1 liquidated damages under state law so that they are based solely on unpaid minimum wages under
2 Claim 3 and not unpaid overtime wages under Claim 4.

3 Moving Parties do not seek liquidated damages with respect to Claims 5 (break time
4 premium pay), 6 (wage statement penalties), or 7 (waiting time penalties) brought under California
5 law. As to Claim 5, Moving Parties seek premium pay and prejudgment interest; Moving Parties
6 are entitled to prejudgment interest on Claim 5 as discussed below.. As to Claim 6, they seek only
7 wage statement penalties, and as to Claim 7, they seek waiting time penalties. The Court finds
8 that Moving Parties have proved their entitlement to the requested premium pay and penalties.

9 **d. Interest**

10 Moving Parties request pre-judgment interest on damages recoverable under Claims 1 and
11 2 under the FLSA, and on Claims 3, 4, and 5 under state law. With respect to the FLSA claims, “a
12 plaintiff cannot recover both prejudgment interest and liquidated damages under the FLSA.”
13 *Orozco v. Borenstein*, No. CV-11-2305-PHX-FJM, 2012 WL 3762408, at *4 (D. Ariz. Aug. 29,
14 2012); *see also Ford v. Alfaro*, 785 F.2d 835, 842 (9th Cir.1986) (recognizing that “in the absence
15 of a liquidated damage award, pre-judgment interest is necessary to fully compensate employees
16 for the losses they have suffered”). The Supreme Court has expressly held in the FLSA context
17 that “[t]o allow an employee to recover the basic statutory wage and liquidated damages, with
18 interest, would have the effect of giving an employee double compensation for damages arising
19 from delay in the payment of the basic minimum wages.” *Brooklyn Sav. Bank v. O’Neil*, 324 U.S.
20 697, 715 (1945). Accordingly, the Court will direct counsel to exclude interest from his
21 calculation of damages on Claims 1 and 2 in the supplemental declaration of counsel requested by
22 the Court.

23 With respect to the state law claims, “under California law plaintiffs may recover
24 liquidated damages *and* prejudgment interest.” *Seviour-Iloff v. LaPaille*, 80 Cal. App. 5th 427,
25 448 (2022), as modified on denial of reh’g (July 21, 2022). Accordingly, Moving Parties’ request
26 for prejudgment interest on Claims 3, 4, and 5 is proper. The Court will award prejudgment
27 interest on Claims 3 and 4 at the statutory rate of 10% set forth in California Labor Code § 218.6,
28 and will award prejudgment interest on Claim 5 at the statutory rate of 7% set forth in California

1 Civil Code § 3287. These rates are reflected in Moving Parties’ calculations of prejudgment
2 interest on their state law claims.

3 Moving Parties do not request prejudgment interest as to Claims 6 and 7 for wage
4 statement penalties and waiting time penalties, respectively.

5 **e. Summary of Ruling**

6 The Court’s ruling on the motion for default judgment therefore is as follows:

- 7 (1) Claim 1 – FLSA Claim for Unpaid Minimum Wages: GRANTED IN PART as to
8 unpaid minimum wages and liquidated damages, DENIED IN PART as to
9 prejudgment interest.
- 10 (2) Claim 2 – FLSA Claim for Unpaid Overtime Wages: GRANTED IN PART as to
11 unpaid overtime wages and liquidated damages, DENIED IN PART as to
12 prejudgment interest.
- 13 (3) Claim 3 – State Law Claim for Unpaid Minimum Wages: GRANTED as to unpaid
14 minimum wages, liquidated damages, and prejudgment interest.
- 15 (4) Claim 4 – State Law Claim for Unpaid Overtime Wages: GRANTED IN PART as
16 to unpaid minimum wages and prejudgment interest, DENIED IN PART as to
17 liquidated damages.
- 18 (5) Claim 5 - State Law Claim for Failure to Provide Rest Breaks: GRANTED as to
19 break time premium pay and prejudgment interest.
- 20 (6) Claim 6 - State Law Claim for Failure to Provide Wage Statements: GRANTED as
21 to wage statement penalties.
- 22 (7) Claim 7 - State Law Claim for Waiting Time Penalties: GRANTED as to waiting
23 time penalties.

24 Moving Parties’ counsel SHALL submit a supplemental declaration recalculating the
25 damages and interest as to Claims 1, 2, and 4 consistent with this order, and providing a revised
26 chart of total damages and interest for each of the Moving Parties.

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1 **III. MOTION FOR ATTORNEYS’ FEES AND COSTS (ECF 61)**

2 Moving Parties request an award of attorneys’ fees and costs under both the FLSA and the
3 California Labor Code. They seek attorneys’ fees in the amount of \$66,492.50 and costs in the
4 amount of \$1,847.87. The Court first sets forth the applicable legal standards and then discusses
5 Moving Parties’ request for attorneys’ fees and costs.

6 **A. Legal Standard**

7 The FLSA provides for an award of attorneys’ fees and costs in actions for unpaid
8 minimum or overtime wages. *See* 29 U.S.C.A. § 216(a) (“The court in such action shall, in
9 addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney’s fee to
10 be paid by the defendant, and costs of the action.”). The California Labor Code likewise provides
11 for an award of attorneys’ fees and costs to the prevailing party in an action for nonpayment of
12 wages. *See* Cal. Lab. Code § 1194(a) (“[A]ny employee receiving less than the legal minimum
13 wage or the legal overtime compensation applicable to the employee is entitled to recover in a
14 civil action the unpaid balance of the full amount of this minimum wage or overtime
15 compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”).

16 Whether calculating attorneys’ fees under California or federal law, courts follow “the
17 ‘lodestar’ method, and the amount of that fee must be determined on the facts of each case.”
18 *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 978 (9th Cir. 2008) (quoting *Ferland v. Conrad*
19 *Credit Corp.*, 244 F.3d 1145, 1149 n.4 (9th Cir. 2001)). Under the lodestar method, the most
20 useful starting point “is the number of hours reasonably expended on the litigation multiplied by a
21 reasonable hourly rate.” *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). The party seeking an
22 award of fees should submit evidence supporting the hours worked and rates claimed. *Id.*

23 “In determining a reasonable hourly rate, the district court should be guided by the rate
24 prevailing in the community for similar work performed by attorneys of comparable skill,
25 experience, and reputation.” *Chalmers v. City of Los Angeles*, 796 F.2d 1205, 1210-11 (9th Cir.
26 1986). “Generally, the relevant community is the forum in which the district court sits.” *Barjon v.*
27 *Dalton*, 132 F.3d 496, 500 (9th Cir. 1997). The district court should exclude hours that were not
28 reasonably expended. *See Hensley*, 461 U.S. at 434.

1 **B. Discussion**

2 Moving Parties have filed a declaration of counsel in support of their request for attorneys’
3 fees. *See* Dresser Decl. ISP Attorneys’ Fees, ECF 61-1. Moving Parties also request that the
4 Court review and approve their Bill of Costs, submitted as an exhibit to the declaration of counsel.
5 The Bill of Costs properly is addressed to the Clerk. *See* Civil Local Rule 54-1. A party who is
6 dissatisfied with the Clerk’s disposition of a Bill of Costs may file an objection with the Court.
7 *See* Civ. L.R. 54-2. The Court observes that Moving Parties’ Bill of Costs was filed and reviewed
8 by the Clerk and found deficient on the basis that judgment has not yet been entered. *See* Bill of
9 Costs, ECF 62; Clerk’s Notice of Deficiency, ECF 63. Moving Parties may submit a Bill of Costs
10 to the Clerk after entry of judgment.

11 With respect to Moving Parties’ request for attorneys’ fees, Moving Parties’ counsel, Mr.
12 Dresser, spent 138.2 hours on this case and his paralegals spent 149.5 hours. Based on counsel’s
13 hourly billing rate of \$400 and the paralegals’ hourly billing rate of \$75, the lodestar for fees is
14 \$66,492.50. These hours and fees are adequately documented by counsel’s declaration, the
15 attached billing records, and the attached summary chart of hours broken down by major tasks.
16 *See* Dresser Decl. ISP Attorneys’ Fees.

17 The Court finds the billing rates of counsel and paralegals to be within the range of fees
18 awarded in this district. Mr. Dresser is the only attorney to bill in this matter. He is a 1982
19 graduate of the University of California, Hastings College of the Law, he has significant civil
20 litigation experience, he is a member of the California State Bar Labor and Employment Law
21 Section, and he has charged \$400 per hour since 2018. *See* Dresser Decl. ISP Attorneys’ Fees ¶¶
22 75-90. Other courts in this district have approved similar hourly rates for experienced attorneys
23 handling wage and hour cases. *See, e.g., Zhou v. Chai*, No. 21CV06067AMODMR, 2023 WL
24 3409460, at *11 (N.D. Cal. May 11, 2023) (“The court finds that the hourly rate of \$450 is
25 reasonable and falls within the market rates for attorneys of similar experience, skill, and
26 reputation who handle wage and hour cases in the Bay Area.”). Three paralegals worked on this
27 case, all experienced, and they billed at \$75 per hour, which is the rate Mr. Dresser has billed for
28 paralegals for a decade. *See id.* ¶¶ 90-96. Courts in this district have approved up to \$180 per

1 hour for experienced paralegals in employment cases. *See, e.g., Aguilar v. Zep Inc.*, No. 13-CV-
2 00563-WHO, 2014 WL 4063144, at *2 (N.D. Cal. Aug. 15, 2014). Accordingly, the Court will
3 award fees based on the requested rates of \$400 for counsel and \$75 for paralegals.

4 The Court also has reviewed the summary of tasks performed and hours expended and
5 finds that 138.2 hours by counsel and 149.5 hours by paralegals is reasonable for the work
6 performed in this case. Mr. Dresser and his paralegals expended the bulk of their time on service
7 of process and preparation of the motion for default judgment. With respect to service of process,
8 the Vuzem Defendants are foreign residents, and service was made pursuant to the Hague
9 Convention on the Service Abroad of Judicial and Extrajudicial Documents. Counsel had to work
10 through interpreters in Croatia and in Slovenia, the summons and complaint had to be translated
11 into Slovenian by a certified interpreter, and counsel had to arrange for the Vuzem Defendants to
12 be served by the Republika Slovenija, Okrožno sodisce (District Court of Ptuj). *See id.* ¶¶ 41-47.
13 With respect to preparation of the present motion for default judgment, Mr. Dresser and his
14 paralegals had to gather information and documents from Moving Parties regarding the dates,
15 times and locations of their work for the defaulted defendants. *See id.* ¶ 61. Mr. Dresser
16 described this as a lengthy process that involved e-mail, zoom and phone calls as well as language
17 difficulties. *See id.* Multiple weekly wage spreadsheets were submitted for each of the Moving
18 Parties, lengthy declarations were submitted by each of the Moving Parties, and the briefing on the
19 motion for default judgment addressed wage claims under both federal and state law. *See id.* ¶¶
20 62-69. Based on Mr. Dresser’s description of the work performed on these and other tasks, the
21 Court finds that the hours expended are reasonable.

22 Accordingly, Moving Parties’ motion for attorneys’ fees is GRANTED in the amount of
23 \$66,492.50.

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IV. ORDER

- (1) The motion for default judgment against the Vuzem Defendants is GRANTED as to Claims 3, 5, 6, and 7, and GRANTED IN PART AND DENIED IN PART as to Claims 1, 2, and 4, as set forth herein.
- (2) Moving Parties’ counsel SHALL submit a supplemental declaration on or before June 21, 2023, recalculating the damages and interest as to Claims 1, 2, and 4 consistent with this order, and providing a revised chart of total damages and interest for each of the Moving Parties. The Court will defer entry of default judgment pending submission of counsel’s supplemental declaration, which will aid the Court in preparing the final judgment.
- (3) The motion for attorneys’ fees is GRANTED in the amount of \$66,492.50.
- (4) This order terminates ECF 59 and 61.

Dated: June 7, 2023



BETH LABSON FREEMAN
United States District Judge