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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

RAYMOND B. GUTHRIE,  
Plaintiff,  
v.  
JD ENTERPRISE & FINANCIAL  
SERVICES.,  
Defendant.

Case No. 11-cv-911-L(DHB)  
**ORDER GRANTING IN PART AND  
DENYING IN PART MOTION FOR  
DEFAULT JUDGMENT [DOC. 37]**

\_\_\_\_\_ Pending before the Court is Plaintiff Raymond B. Guthrie’s motion for default judgment against Defendant Joseph Dassa. This action was brought for violations of the Fair Debt Collection Practices Act (“FDCPA”) and the Rosenthal Fair Debt Collection Practices Act (“Rosenthal Act”). JD Enterprise & Financial Services and Joe Willis have since been dismissed from this action. To date, Defendant has not opposed this motion.

The Court found this motion suitable for determination on the papers submitted and without oral argument. *See* Civ. L.R. 7.1(d.1). (Doc. 39.) For the following reasons, the Court **GRANTS IN PART** and **DENIES IN PART** Plaintiff’s motion for default judgment. (Doc. 37.)

1 **I. BACKGROUND**

2 Plaintiff allegedly incurred “certain financial obligations” sometime before September 23,  
3 2010, which were “primarily for personal, family or household purposes[.]” (Compl. ¶¶ 21–22.)  
4 Sometime thereafter, but before September 23, 2010, Plaintiff allegedly fell behind in the  
5 payments owed on the debt. (*Id.* ¶ 24.) Plaintiff apparently disputes the validity of the  
6 aforementioned debt. (*See id.*) This alleged debt was “assigned, placed, or otherwise  
7 transferred, to Defendants for collection.” (*Id.* ¶ 25.)

8 On or about September 23, 2010, Defendant telephoned Plaintiff and demanded payment  
9 for the debt. (Compl. ¶ 26; Guthrie Decl. ¶ 2.) During this communication, Defendant told  
10 Plaintiff that he was a process server obligated to serve Plaintiff with legal documents unless  
11 Plaintiff called Joe Willis and resolved the problem. (Compl. ¶ 28; Guthrie Decl. ¶ 3.)  
12 Subsequently, Plaintiff called Mr. Willis and was falsely informed that he was an attorney;  
13 Plaintiff alleges that Mr. Willis is a debt collector. (Compl. ¶ 37.) Mr. Willis “explained to  
14 Plaintiff that he now owned the alleged debt which was originally ‘a little under \$200’ but now  
15 had risen to over \$900 due to his fees.” (*Id.* ¶ 41.)

16 Plaintiff verbally disputed the debt, but Mr. Willis told Plaintiff that if he did not pay the  
17 debt that he would be served with legal papers. (Compl. ¶ 45.) At one point during the  
18 conversation, Mr. Willis indicated that he had a process server on another call and that he  
19 instructed the process server to serve Plaintiff with legal papers. (*Id.* ¶¶ 48–50.) Mr. Willis  
20 added that failure to pay immediately would result in additional costs and legal fees, which he  
21 stated could amount to thousands of dollars. (*Id.* ¶ 51.) He also threatened that he would “come  
22 after Plaintiff’s ‘wages, car, and job.’” (*Id.* ¶ 54.)

23 Plaintiff inquired about the details of the alleged debt, including how it had increased  
24 several hundred dollars from the original amount Mr. Willis claimed Plaintiff owed, but Mr.  
25 Willis was not responsive. (Compl. ¶ 58.) When Plaintiff refused to pay, Mr. Willis ended the  
26 conversation stating “it’s your mistake” and that he would see Plaintiff in court. (*Id.* ¶ 63.) A  
27 few minutes later, Plaintiff called Mr. Willis back and asked for an address where he could write  
28 a letter requesting information and validation of the alleged debt, but Mr. Willis refused to give

1 an address, accused him of “buying time,” and ended the conversation again by stating, “I’ll see  
2 you in court.” (*Id.* ¶¶ 66–67.) Plaintiff is under the impression and belief that Defendant and  
3 Mr. Willis are the same person. (Guthrie Decl. ¶ 12.)

4       Within 30 days following the phone conversation, Plaintiff’s counsel found the business  
5 address for Mr. Willis and JD Enterprise & Financial Services, and mailed a letter requesting  
6 validation of the alleged debt. (Smith Decl. ¶ 7.) Neither Plaintiff nor Plaintiff’s counsel  
7 received a written response to the request for validation. (Guthrie Decl. ¶ 13; Smith Decl. ¶ 8.)  
8 And to this day, Plaintiff has not been served with any legal paperwork for the alleged debt.  
9 (Guthrie Decl. ¶ 14.)

10       On April 28, 2011, Plaintiff commenced this action for violations of the FDCPA and  
11 Rosenthal Act. On September 10, 2012, the Clerk of the Court issued an entry of default as to  
12 Joseph Dassa. (Doc. 24.) Following an issuance of a notice of hearing for failure to move for  
13 default judgment (Doc. 30) and an order reprimanding Plaintiff’s counsel for repeated failures to  
14 comply with the rules governing electronic filing (Doc. 33), Plaintiff filed a motion for default  
15 judgment against Mr. Dassa. To date, there has been no opposition to the motion.

## 17 **II. LEGAL STANDARD**

18       Rule 55(b)(2) of the Federal Rules of Civil Procedure governs applications to the court  
19 for default judgment. *See* Fed. R. Civ. P. 55(b)(2). Default judgment is available as long as the  
20 plaintiff establishes: (1) defendant has been served with the summons and complaint and default  
21 was entered for their failure to appear; (2) defendant is neither a minor nor an incompetent  
22 person; (3) defendant is not in military service or not otherwise subject to the Soldiers and  
23 Sailors Relief Act of 1940; and (4) if defendant has appeared in the action, that defendant was  
24 provided with notice of the application for default judgment at least three days prior to the  
25 hearing. *See, e.g.,* 50 U.S.C. § 521; Fed. R. Civ. P. 55; *Twentieth Century Fox Film Corp. v.*  
26 *Streeter*, 438 F. Supp. 2d 1065, 1070 (D. Ariz. 2006).

27       Upon entry of default, the factual allegations in plaintiff’s complaint, except those  
28 relating to damages, are deemed admitted. *E.g., Televideo Sys., Inc. v. Heidenthal*, 826 F.2d

1 915, 917–18 (9th Cir. 1987) (quoting *Geddes v. United Fin. Grp.*, 559 F.2d 557, 560 (9th Cir.  
2 1977)). Where the amount of damages claimed is a liquidated sum or capable of mathematical  
3 calculation, the court may enter a default judgment without a hearing. *Davis v. Fendler*, 650  
4 F.2d 1154, 1161 (9th Cir. 1981). When it is necessary for the plaintiff to prove unliquidated or  
5 punitive damages, the court may require plaintiff to file declarations or affidavits providing  
6 evidence for damages in lieu of a full evidentiary hearing. *Transportes Aereos De Angola v. Jet*  
7 *Traders Inv. Corp.*, 624 F. Supp. 264, 266 (D. Del. 1985).

8 Entry of default judgment is within the trial court’s discretion. *See Taylor Made Golf Co.*  
9 *v. Carsten Sports, Ltd.*, 175 F.R.D. 658, 660 (S.D. Cal. 1997) (Brewster, J.) (citing *Lau Ah Yew*  
10 *v. Dulles*, 236 F.2d 415, 416 (9th Cir. 1956)). In making this determination, the court considers  
11 the following factors: (1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff’s  
12 substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at stake in the  
13 action, (5) the possibility of a dispute concerning the material facts, (6) whether the default was  
14 due to excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil  
15 Procedure favoring decisions on the merits. *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir.  
16 1986).

### 18 **III. DISCUSSION**

#### 19 **A. Statutory Damages**

20 Upon default, the factual allegations in the complaint relating to damages are not taken as  
21 true. *Gaddes v. United Fin. Grp.*, 559 F.2d 557, 560 (9th Cir. 1977). “The plaintiff is required  
22 to provide evidence of its damages, and the damages sought must not be different in kind or  
23 amount from those set forth in the complaint.” *Amini Innovation Corp. v. KTY Int’l Mktg.*, 768  
24 F. Supp. 2d 1049, 1054 (C.D. Cal. 2011). However, statutory damages under the FDCPA are  
25 available without proof of actual damages. *Baker v. G.C. Servs. Corp.*, 677 F.2d 775, 781 (9th  
26 Cir. 1982). Under the FDCPA, a plaintiff may recover statutory damages of up to \$1,000, and  
27 under the Rosenthal Act, a plaintiff may recover statutory damages for a willful and knowing  
28 violation in an amount not less than \$100 but not greater than \$1,000. 15 U.S.C. §

1 1692k(a)(2)(A); Cal. Civ. Code § 1788.30(b). Damages may be awarded cumulatively under  
2 both statutes. 15 U.S.C. § 1692n; Cal. Civ. Code § 1788.32; *Gonzalez v. Arrow Fin. Servs.,*  
3 *LLC*, 660 F.3d 1055, 1066-68 (9th Cir. 2011).

4 In considering an award of statutory damages, the court “shall consider, among other  
5 relevant factors . . . the frequency and persistence of noncompliance by the debt collector, the  
6 nature of such noncompliance, and the extent to which such noncompliance was intentional.” 15  
7 U.S.C. § 1692k(b)(1). “Some courts refuse to award any statutory damages where violations are  
8 technical or *de minimis*.” *Smith v. Simm Assocs., Inc.*, No. C12-4622, 2013 WL 1800019, at \*1  
9 (N.D. Cal. Apr. 29, 2013) (citing *Lester E. Cox Med. Ctr. v. Huntsman*, 408 F.3d 989, 933-94  
10 (8th Cir. 2005)).

11 For this violation, Plaintiff requests the maximum award of statutory damages under both  
12 the FDCPA and the Rosenthal Act. Upon review, nothing in the facts indicate that this single  
13 violation merits a maximum damages award. But the violation is more than technical or *de*  
14 *minimis*. The facts strongly suggest that Defendant was misleading and deceptive, from the  
15 misrepresentation that Mr. Willis was an attorney to the belief that “Joe Willis” is actually an  
16 alias for Mr. Dassa. (See Guthrie Decl. ¶¶ 1–11.) Given the single but substantial violation, the  
17 Court awards Plaintiff \$750 under the FDCPA and \$750 under the Rosenthal Act.

## 18

### 19 **B. Actual Damages**

20 Under the FDCPA, actual damages may be awarded to a plaintiff as a result of the  
21 defendant’s failure to comply with its provisions. 15 U.S.C. § 1692k(a)(1). Actual damages  
22 include any out-of-pocket expenses as well as damages for personal humiliation, embarrassment,  
23 mental anguish, or emotional distress. *Fausto v. Credigy Servs. Corp.*, 598 F. Supp. 2d 1049,  
24 1054 (N.D. Cal. 2009). Emotional distress may be proven in a number of ways, including  
25 through corroborating medical evidence or non-expert testimony establishing “manifestations of  
26 mental anguish [and the occurrence of] significant emotional harm.” *Dawson v. Wash. Mut.*  
27 *Bank F.A.*, 390 F.3d 1139, 1149-50 (9th Cir. 2004).

28 //

1 Plaintiff requests \$5,000 in actual damages because “he still is affected by the false  
2 threats and abusive collection tactics Defendant Dassa used in his attempt to collect the alleged  
3 debt.” (Pl.’s Mot. 6:24–28.) The only evidence that Plaintiff provides is his own declaration  
4 which includes three paragraphs (out of eighteen) that discuss the lasting harm that he sustained.  
5 (See Guthrie Decl. ¶¶ 15–17.) These three paragraphs state the following: (1) “The collection  
6 tactics used by Defendant Dassa caused me to suffer emotional and mental distress”; (2) “I  
7 suffered sleeplessness, pessimism, restlessness, anxiety, worry, and irritability as a result of  
8 Defendant Dassa’s collection abuse”; and (3) “To date I worry that Defendant Dassa may renew  
9 his abusive collection activity as he has clearly[.]” (*Id.*) No further evidence is provided. And  
10 without more, Plaintiff fails to prove that he sustained any lasting harm that warrants awarding  
11 him \$5,000 in actual damages for personal humiliation, embarrassment, mental anguish, or  
12 emotional distress. *See Fausto*, 598 F. Supp. 2d at 1054.

### 13 14 **C. Attorney’s Fees and Costs**

15 Both the FDCPA and Rosenthal Act provides for an award of attorney’s fees and costs to  
16 a prevailing plaintiff. 15 U.S.C. § 1692k(a)(3) (debt collector is liable for “the costs of the  
17 action, together with a reasonable attorney’s fees as determined by the court”); Cal. Civ. Code §  
18 1788.30(c). “The FDCPA’s statutory language makes an award of fees mandatory.” *Camacho*  
19 *v. Bridgeport Fin., Inc.*, 523 F.3d 973, 978 (9th Cir. 2008).

20 Courts in the Ninth Circuit calculate an award of attorneys’ fees using the lodestar  
21 method, whereby a court multiplies “the number of hours the prevailing party reasonably  
22 expended on the litigation by a reasonable hourly rate.” *Camacho*, 523 F.3d at 978 (internal  
23 quotation marks omitted). The fee applicant bears the burden of demonstrating that the number  
24 of hours spent were “reasonably expended” and that counsel made “a good faith effort to  
25 exclude from [the] fee request hours that are excessive, redundant, or otherwise unnecessary.”  
26 *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983). It is likewise the fee applicant’s burden to  
27 “submit evidence supporting the hours worked and rates claimed . . . . Where the documentation  
28 of hours is inadequate, the district court may reduce the award accordingly.” *Id.* at 433.

1 “Although in most cases, the lodestar figure is presumptively a reasonable fee award, the  
2 district court may, if circumstances warrant, adjust the lodestar to account for other factors  
3 which are not subsumed within it.” *Ferland v. Conrad Credit Corp.*, 244 F.3d 1145, 1149 n.4  
4 (9th Cir. 2001). Those factors—also known as the *Kerr* factors—include:

5 (1) the time and labor required, (2) the novelty and difficulty of the  
6 questions involved, (3) the skill requisite to perform the legal service  
7 properly, (4) the preclusion of other employment by the attorney due to  
8 acceptance of the case, (5) the customary fee, (6) whether the fee is  
9 fixed or contingent, (7) time limitations imposed by the client or the  
10 circumstances, (8) the amount involved and the results obtained, (9) the  
11 experience, reputation, and ability of the attorneys, (10) the  
12 “undesirability” of the case, (11) the nature and length of the  
13 professional relationship with the client, and (12) awards in similar  
14 cases.

15 *Ballen v. City of Redmond*, 466 F.3d 736, 746 (9th Cir. 2006) (quoting *McGrath v. Cnty. of*  
16 *Nevada*, 67 F.3d 248, 252 (9th Cir. 1995)); *see also Kerr v. Screen Extras Guild, Inc.*, 526 F.2d  
17 67, 70 (9th Cir. 1995).

18 Here, Plaintiff’s counsel purportedly recorded 22.31 hours at \$295 per hour. That rate  
19 appears to be reasonable for this area and community.<sup>1</sup> However, upon closer inspection of the  
20 billing records, Plaintiff’s counsel’s purported hours recorded do not match the sum of the hours  
21 from each billing entry. After independently adding the hours expended from each billing entry,  
22 the sum is 20.11 hours. (*See* Smith Decl. Ex. A.) Though arithmetic errors certainly occur, it is  
23 nonetheless disappointing to see such mathematical sloppiness in light of the Court reprimanding  
24 Plaintiff’s counsel for earlier failures in complying with this district’s filing requirements. Using  
25 the lodestar method, the new attorney’s fee total amounts to \$5,932.45.

26 Moving on to the costs incurred, all of the cost and expense descriptions are at least  
27 minimally adequate except one. The billing record for a “cost and expense” incurred on March  
28 9, 2012 is merely described as “SWLS #7313” for a charge of \$530. (*See* Smith Decl. Ex. A.) It  
is not clear what that charge is for, and thus that amount will be deducted from the total costs  
requested. Adjusting for the one ambiguous charge, the total costs amount to \$823.28.

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<sup>1</sup> The Court notes that Plaintiff loosely supports the proposition that his counsel’s billing rate is reasonable for this area and community. (*See* Smith Decl. ¶¶ 27–28.)


1 The Court notes that the overall fee award seems high, but also notes that there was an  
2 evidentiary hearing that required a significant expenditure of time to prepare for. *See Smith*,  
3 2013 WL 1800019, at \*2 (noting that an overall fee award of \$6,494.50 “seems high” for an  
4 action prosecuting FDCPA and Rosenthal Act violations). Accordingly, the Court partially  
5 approves of the request, and awards \$6,755.73 in fees and costs.

6  
7 **IV. CONCLUSION & ORDER**

8 In light of the foregoing, the Court **GRANTS IN PART** and **DENIES IN PART**  
9 Plaintiff’s motion for default judgment. (Doc. 37.) Specifically, the Court **GRANTS IN PART**  
10 Plaintiff’s request for statutory damages and attorney’s fees and costs, and **DENIES** his request  
11 for actual damages. Judgment shall be entered in favor of Plaintiff in the amount of \$1,500 for  
12 statutory damages and \$6,755.73 for fees and costs, for a total of \$8255.73.

13 **IT IS SO ORDERED.**

14  
15 DATED: May 20, 2013

16   
17 M. James Lorenz  
United States District Court Judge

18 COPY TO:

19 HON. DAVID H. BARTICK  
20 UNITED STATES MAGISTRATE JUDGE

21 ALL PARTIES/COUNSEL  
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