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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ZACHARY CRAWFORD)	Case No.: 13cv1328 BTM (RBB)
)	
Plaintiff,)	ORDER GRANTING PLAINTIFF’S
)	MOTION FOR DEFAULT
v.)	JUDGMENT
)	
DYNAMIC RECOVERY SERVICES,)	
INC.,)	
)	
Defendant.)	
)	

On October 18, 2013, Plaintiff Zachary Crawford moved for entry of default judgment against Defendant Dynamic Recovery Services, Inc. For the reasons discussed below, Plaintiff’s motion is GRANTED.

BACKGROUND

Plaintiff filed a complaint against Defendant on June 7, 2013, alleging that Defendant attempted to collect a debt by leaving multiple voice messages for Plaintiff threatening to disclose Plaintiff’s debt to his commanding officer and failing to

1 identify itself as a debt collector thereby violating the Fair Debt Collection Practices
2 Act (“FDCPA”), 15 U.S.C. § 1692, et seq., and the Rosenthal Fair Debt Collection
3 Practice Act (“Rosenthal Act”), Cal. Civ. Code § 1788, et seq. (Doc. 1; Plaintiff’s
4 Compl. ¶¶ 11-26). The complaint seeks a judgment of \$2,000.00 in statutory
5 damages plus reasonable attorney’s fees and costs. The proof of service indicates that
6 a summons and copy of the complaint was served on Ray Davison, who is designated
7 by law to accept service of process on behalf of Defendant, on June 18, 2013 at 12:00
8 p.m. (Doc. 3).

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12 Defendant has thus far failed to respond and no attorney has entered any
13 appearance on Defendant’s behalf. On July 23, 2013, the Clerk filed an entry of
14 default against Defendant. (Doc. 8). Plaintiff now moves for default judgment in the
15 amount of \$5,496.00. (Doc. 10). The attached proof of service shows that on October
16 18, 2013, the motion papers were mailed to Defendant at Dynamic Recovery
17 Services, Inc. 4101 McEwen Road, Suite 150, Farmers Branch, Texas 75244. (Doc.
18 10).

19 20 21 **LEGAL STANDARD**

22 Fed. R. Civ. P. 55 provides that “[w]hen a party against whom a judgment for
23 affirmative relief is sought has failed to plead or otherwise defend, and that failure is
24 shown by affidavit or otherwise, the clerk must enter the party's default.” When a
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1 plaintiff's claim is not for a sum certain, the plaintiff "must apply to the court for a
2 default judgment."
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4 Default does not automatically entitle a plaintiff to a court-ordered judgment.
5 See Draper v. Coombs, 792 F.2d 915, 924-25 (9th Cir. 1986). The court has
6 discretion to grant or deny relief based on:
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- 8 (1) the possibility of prejudice to the plaintiff, (2) the
- 9 merits of plaintiff's substantive claim, (3) the sufficiency
- 10 of the complaint, (4) the sum of money at stake in the
- 11 action; (5) the possibility of a dispute concerning
- 12 material facts; (6) whether the default was due to
- 13 excusable neglect, and (7) the strong policy underlying
- the Federal Rules of Civil Procedure favoring decisions
- on the merits.

14 Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986) (citing 6 Moore's Federal
15 Practice ¶ 55-05[2], at 55-24 to 55-26.).

16 "A failure to make a timely answer to a properly served complaint will justify
17 the entry of a default judgment." Benny v. Pipes, 799 F.2d 489, 492 (9th Cir.1986)
18 (citing Fed R. Civ. P. 55). "The general rule of law is that upon default the factual
19 allegations of the complaint, except those relating to the amount of damages, will be
20 taken as true." Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917-18 (9th
21 Cir.1987) (citation omitted). Thus, Plaintiff must prove damages. PepsiCo, Inc. v.
22 California Security Cans, 238 F.Supp.2d 1172, 1175 (C.D. Cal. 2002). However, the
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1 judgment may “not be different in kind or exceed in amount that prayed for in the
2 [complaint].” Fed R. Civ. Pro. 54(c).

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4 **ANALYSIS**

5 The Court finds that Defendant has failed to plead or otherwise defend against
6 Plaintiff’s complaint and that Defendant was properly served with the complaint on
7 June 18, 2013 and the motion for default judgment on October 18, 2013.

8 Accordingly, the Court holds that Defendant has defaulted and accepts Plaintiff’s
9 allegations as true. Televideo Sys., Inc., 826 F.2d at 917-18.

10
11 Plaintiff’s allegations constitute violations of the FDCPA and the Rosenthal
12 Act, which prohibit “conduct the natural consequence of which is to harass, oppress,
13 or abuse any person in connection with the collection of a debt,” 16 U.S.C. § 1692d;
14 “use [of] any false, deceptive, or misleading representation or means in connection
15 with the collection of any debt,” including “[t]he threat to take any action that cannot
16 legally be taken or that is not intended to be taken,” and “failure to disclose in
17 subsequent communications that the communication is from a debt collector,” §
18 1692e, e(5), e(11); and “use [of] unfair or unconscionable means to collect or attempt
19 to collect any debt,” § 1692f. See also Cal. Civ. Code § 1788.17 (Rosenthal Act is
20 inclusive of the FDCPA); Crockett v. Rash Curtis & Assocs., 929 F. Supp. 2d 1030,
21 1033 (N.D. Cal. 2013) (“A claim for violation of Rosenthal Act Section 1788.17
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1 simply requires showing that a defendant violated any of several provisions of the
2 FDCPA.”).

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4 Having determined that Plaintiff has established a claim under the FDCPA and
5 the Rosenthal Act, the Court must determine if Plaintiff is entitled to judgment and, if
6 so, in what amount. The Court looks to the Eitel factors and finds that (1) a failure to
7 render judgment would leave Plaintiff without a remedy and thereby prejudice
8 Plaintiff, (2) that Plaintiff’s claim has merit and (3) is supported by a complete and
9 sufficient complaint, (4) that the sum of money at stake in this action is substantial
10 but is supported by the facts of the case and is not so unreasonable as to be unfairly
11 prejudicial to Defendant, (5) that Defendant has taken no action to show that it
12 disputes the material facts as alleged by Plaintiff or (6) that its failure to do so is the
13 result of excusable neglect, and (7) that this Court cannot reach a decision on the
14 merits in this case in light of Defendant’s failure to appear and defend against
15 Plaintiff’s claim. See Eitel, 782 F.2d at 1471-72. These factors weigh in favor of
16 granting Plaintiff’s motion for default judgment.

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21 First, Plaintiff is entitled to statutory damages totaling \$2,000.00. Under the
22 FDCPA, a debt collector is liable to an individual plaintiff for “additional damages as
23 the court may allow, but not exceeding \$1,000.” 15 U.S.C. § 1692k(a)(2)(a). “In
24 determining the amount of liability,” courts look to “the frequency and persistence of
25 noncompliance by the debt collector, the nature of such noncompliance, and the
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1 extent to which such noncompliance was intentional.” Id. at § 1692k(b)(1). Under the
2 Rosenthal Act, a “debt collector who willfully and knowingly violates” the Act is
3 liable to an individual plaintiff “for a penalty in such amount as the court may allow,
4 which shall not be less than one hundred dollars (\$100) nor greater than one thousand
5 dollars (\$1,000).” Cal. Civ. Code § 1788.30(b). Accepting the allegations as true, the
6 Court finds that Defendant’s conduct, particularly the threat to reveal Plaintiff’s debt
7 to his commanding officer, was of a particularly culpable nature - exactly the kind of
8 abusive conduct the FDCPA was designed to deter. See 15 U.S.C. § 1692(a). The
9 Court also finds that such conduct was done “willfully and knowingly” in violation of
10 the Rosenthal Act. Accordingly, the Court awards the maximum statutory damage of
11 \$1,000.00 under both statutes for a total of \$2,000.00 in statutory damages.

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16 Second, Plaintiff is also entitled to reasonable attorney’s fees and costs as the
17 prevailing party. 15 U.S.C. § 1692k(a)(3); Cal. Civ. Code § 1788.30(c); see also
18 Camacho v. Bridgeport Financial, Inc., 523 F.3d 973, 978 (9th Cir. 2008) (“The
19 FDCPA’s statutory language makes an award of fees mandatory. The reason for
20 mandatory fees is that Congress chose a private attorney general approach to assume
21 enforcement of the FDCPA.” (internal quotation marks and citations omitted)). When
22 calculating an award for attorney’s fees, courts use the “lodestar” method, which “is
23 calculated by multiplying the number of hours the prevailing party reasonably
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1 expended on the litigation by a reasonable hourly rate.” Camacho, 523 F.3d at 978
2 (citations omitted).

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4 Plaintiff seeks to recover attorney’s fees for Douglas Baek at a rate of \$285.00
5 per hour for 4.9 hours; attorney’s fees for Rory Leisinger at a rate of \$285.00 per hour
6 for 5.2 hours; and fees for work by paralegals at \$145.00 per hour for 1.5 hours.
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8 (Plaintiff’s Exhibit Statement of Services). Looking to the attached declarations, the
9 Court notes that Rory Leisinger had been practicing law for approximately two years
10 and Douglas Baek had been practicing law for approximately five years when
11 working on this case in 2013. (Decl. of Attorneys).
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13 Mr. Baek notes that he was recently awarded an hourly rate of \$285.00 in
14 another FDCPA case: Anna Vardanyan v. CMRE Financial Services, Inc., 8:11-cv-
15 01474-JVS-JCG (C.D. Cal. February 11, 2013). (Decl. of Attorneys).
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17 Plaintiff has attached both the 2013 Laffey Matrix¹ and the 2010-11 United
18 States Consumer Law Attorney Fee Survey Report (“Attorney Fee Survey”) in
19 support of their argument that the fees sought are reasonable. The 2013 Laffey Matrix
20 suggests hourly rates of \$145 for paralegals, \$245 for attorneys with 1-3 years of
21 experience, and \$290 for attorneys with 4-7 years of experience. (Plaintiff’s Ex. N).
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25 ¹ The Laffey Matrix is prepared by the Civil Division of the United States Attorney’s
26 Office for the District of Columbia and charts the hourly rates for attorneys with
27 varying levels of experience. The Matrix is intended to be used in cases in which a
28 fee-shifting provision allows a party to recover reasonable attorney’s fees. Rates are
based on legal fees in the D.C.-Baltimore area.

1 The Attorney Fee Survey provides average hourly rates of \$237 for California
2 consumer law attorneys with 1-3 years of experience and \$347 for California
3 consumer law attorneys with 3-5 years of experience. (Plaintiff's Ex. M).
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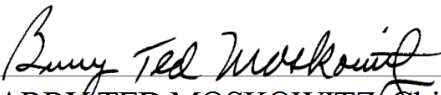
5 Based on Plaintiff's declarations and exhibits, the Court concludes that the
6 attorney's fees sought by Plaintiff's counsel are similar to those charged in the legal
7 community for similar cases and therefore reasonable.
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9 **CONCLUSION**

10 For the foregoing reasons, the Court GRANTS Plaintiff's motion for default
11 judgment in the amount of \$5,496.00.
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14 IT IS SO ORDERED.

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16 Dated: January 10, 2014


BARRY TED MOSKOWITZ, Chief Judge
United States District Court