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5 UNITED STATES DISTRICT COURT  
6 SOUTHERN DISTRICT OF CALIFORNIA  
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8 XIFIN, INC., a California  
9 Corporation,

10 Plaintiff,

11 v.

12 Prestige Worldwide Leasing, a Louisiana  
13 limited liability company

14 Defendants.

Case No.: 3:18-CV-02792-WQH-MDD

**ORDER**

15 HAYES, Judge:

16 The matters before the Court are the Motion for Default Judgment (ECF No. 11)  
17 filed by Plaintiff XIFIN, Inc. (Xifin) against Defendant Prestige Worldwide Leasing, a  
18 Louisiana limited liability company (Prestige), and the Motion to File Documents  
19 Under Seal filed by Plaintiff Xifin (ECF No. 9).

20 **Background**

21 Plaintiff is a healthcare information technology company that provides its clients  
22 with cloud-based billing services. (ECF No. 1 at 3). Defendant is a healthcare diagnosis  
23 service provider organized under the laws of the State of Louisiana with its principal place  
24 of business in Louisiana. (ECF No. 1 at 2–3).

25 On June 23, 2014, Plaintiff entered into a written Systems and Services Agreement  
26 (Contract). (ECF No. 1 at 3). Pursuant to the Contract, Plaintiff implemented a revenue  
27 performance management system for Defendant and provided Defendant with access to  
28

1 Defendant's System Environment. (ECF No. 1 at 4). Beginning in May 2016, Defendant  
2 became delinquent in paying service fees due under the Contract. (Tammy Lawrence  
3 Decl., ECF No. 11-3 ¶ 10). On June 1, 2016, Plaintiff informed Defendant's Chief  
4 Information Officer (CIO) of the past due amounts. *Id.* ¶ 11. After June 1, 2016, Plaintiff  
5 informed Defendant's CIO and Chief Executive Officer (CEO) on several occasions  
6 regarding its delinquent account by email and teleconference. *Id.* ¶ 12. Prestige did not  
7 dispute the amount of service fees owed. *Id.* ¶ 13. From November 1, 2014 through  
8 September 30, 2017, Plaintiff continued to provide Defendant with services and access,  
9 despite Defendant's failure to pay amounts owed and accruing. *Id.* ¶ 14. On June 26, 2017,  
10 Plaintiff provided notice of non-renewal of the Contract. *Id.* ¶ 15. Until September 30,  
11 2017, Plaintiff continued to provide Defendant with services and continued to submit  
12 claims to third-party payors on Defendant's behalf, despite Defendant's failure to pay  
13 amounts owed and accruing. *Id.* ¶ 16. On September 30, 2017, the Contract expired. *Id.*

14 On December 11, 2018, Plaintiff initiated this action by filing a Complaint against  
15 Defendant for breach of contract. (ECF No. 1). On January 7, 2019, Plaintiff filed a Proof  
16 of Service, showing that it properly served Defendant a copy of the Complaint. (ECF No.  
17 4). When Defendant failed to respond to the Complaint, Plaintiff filed a Request for an  
18 Entry of Default. (ECF No. 5). On January 24, 2019, Plaintiff filed a Certificate of Service,  
19 showing that it properly served Defendant an Application for Entry of Default by Clerk of  
20 the Court. (ECF No. 6). On January 25, 2019, the Clerk of the Court granted Plaintiff's  
21 Request. (ECF No. 7). On July 16, 2019, Plaintiff filed a Motion for Default Judgment  
22 and against Defendant and a Motion to File Documents Under Seal. (ECF No. 11).

## 23 Discussion

### 24 A. Default Judgment

25 Federal Rule of Civil Procedure 55 provides that “[w]hen a party against whom a  
26 judgment for affirmative relief is sought has failed to plead or otherwise defend ... the clerk  
27 must enter the party's default.” Fed. R. Civ. P. 55(a). After default is properly entered, a  
28 party seeking relief other than for a sum certain must apply to the Court for a default

1 judgment. Fed. R. Civ. P. 55(b). “The general rule of law is that upon default the factual  
2 allegations of the complaint, except those relating to the amount of damages, will be taken  
3 as true.” *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917–18 (9th Cir. 1987)  
4 (quotation omitted). Courts consider the following factors when determining whether a  
5 default judgment should be granted:

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

11 *Eitel v. McCool*, 782 F.2d 1470, 1471–72 (9th Cir. 1986).

12 1. Possibility of Prejudice to Plaintiff

13 Plaintiff claims Defendant used Plaintiff’s services yet failed to pay amounts due  
14 under the Contract. Because a denial of default judgment would leave Plaintiff without  
15 recourse for recovery, the Court finds the first *Eitel* factor favors granting default judgment.

16 2. Merits of Plaintiff’s Claim & Sufficiency of Complaint

17 The second and third *Eitel* factors are the merits of a plaintiff’s substantive claim  
18 and the sufficiency of the complaint. *Eitel*, 782 F.2d at 1471–72. The Ninth Circuit has  
19 suggested these two factors require a plaintiff to “state a claim on which the [plaintiff]  
20 may recover.” *Kloeping v. Fireman’s Fund*, No. C 94-2684 TEH, 1996 WL 75314, at \*2  
21 (N.D. Cal. Feb. 13, 1996) (quoting *Danning v. Lavine*, 572 F.2d 1386, 1388 (9th Cir.  
22 1978)). In its complaint, Plaintiff asserts one claim for breach of contract. Plaintiff alleges  
23 the existence of the Contract, Plaintiff’s performance, Defendant’s breach, and resulting  
24 damages. *See Reichert v. General Ins. Co. of America*, 68 Cal. 2d 822, 830 (1968).  
25 Accepting the factual allegations as true, as the Court must in deciding the present motion,  
26 the Court finds that Plaintiff sufficiently pleaded all the requisite elements of a breach of  
27 contract claim. Therefore, these two factors favor entry of default judgment.  
28

1       3. Amount of Money at Stake

2           Default judgment is disfavored where the sum of money at stake is too large or  
3 unreasonable in relation to defendant’s conduct. *Truong Giang Corp. v. Twinstar Tea*  
4 *Corp.*, No. C 06– 03594 JSW, 2007 WL 1545173, at \*12 (N.D. Cal. May 29, 2007)  
5 (citation omitted). However, when “the sum of money at stake is tailored to the specific  
6 misconduct of the defendant, default judgment may be appropriate.” *Bd. of Trustees v.*  
7 *Core Concrete Const., Inc.*, No. C 11-02532 LB, 2012 WL 380304, at \*4 (N.D. Cal. Jan.  
8 17, 2012). Plaintiff seeks damages in the amount of \$273,211.17, representing \$265,033  
9 in unpaid monthly service fees and \$8,177.38 in unpaid finance charges. The amount  
10 requested is supported by the evidence and reasonably proportionate to the harm caused by  
11 Defendant’s purported breach of the Contract. Accordingly, this factor weighs in favor of  
12 granting default judgment.

13       4. Possibility of Dispute Over Material Facts

14           Defendant has refused to participate in this lawsuit. Thus, no possibility of dispute  
15 concerning material facts has been presented. The Court takes all factual allegations in the  
16 Complaint as true in light of the entry of default. *See Fair Hous. of Marin v. Combs*, 285  
17 F.3d 899, 906 (9th Cir. 2002). Therefore, this factor also favors entry of default judgment.

18       5. Whether Default was Due to Excusable Neglect

19           A court may consider whether there are circumstances surrounding a party’s failure  
20 to respond constitutes excusable neglect. *See Eitel*, 782 F.2d at 1472. However, a court  
21 may find excusable neglect to be lacking where a defendant was properly served with the  
22 complaint and notice of default judgment. *See Shanghai Automation Instrument Co. v.*  
23 *Kuei*, 194 F. Supp. 2d 995, 1005 (N.D. Cal. 2001). Here, Defendant has been on notice of  
24 its material breach since June 1, 2016. (Tammy Lawrence Decl., ECF No. 11-3 ¶ 11). On  
25 December 18, 2018, Defendant was properly served with the complaint. (ECF No. 4). On  
26 January 24, 2019, Plaintiff filed a Certificate of Service, showing that it properly served  
27 Defendant an Application for Entry of Default by Clerk of the Court. (ECF No. 6).  
28 Defendant was properly served the Clerk of the Court’s entry of default (ECF No. 7) and

1 the instant motion for this Court’s entry of default judgment (ECF No. 11). Yet Defendant  
2 failed to answer the Complaint and did not oppose the above-referenced motions or object  
3 to the Clerk of the Court’s entry of default. Therefore, this factor weighs in favor of default  
4 judgment.

5 6. Policy Favoring Decisions on the Merits

6 “Cases should be decided upon their merits whenever reasonably possible.” *Eitel*,  
7 782 F.2d at 1472. In this case, however, the other *Eitel* factors outweigh this general policy  
8 because of Defendant’s “failure to answer Plaintiff’s [c]omplaint makes decision on the  
9 merits impractical, if not impossible.” *PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d  
10 1172, 1177 (C.D. Cal. 2002).

11 **B. Damages**

12 Under Rule 8(a)(3), a plaintiff’s demand for relief must be specific, and he “must  
13 ‘prove up’ the amount of damages.” *Philip Morris USA Inc. v. Banh*, No. CV 03–4043  
14 GAF (PJWx), 2005 WL 5758392, at \*6 (C.D. Cal. Jan. 14, 2005); *Elektra Entmn’t Grp.,*  
15 *Inc. v. Bryant*, No. CV 03–6371 GAF(JTLX), 2004 WL 783123, at \*5 (C.D. Cal. Feb. 13,  
16 2004) (“Plaintiffs must ‘prove up’ the amount of damages that they are claiming.”). Rule  
17 54(c) limits the relief that can be sought in a motion for entry of default judgment to that  
18 identified in the complaint. Fed. R. Civ. P. 54(c) (“A default judgment must not differ in  
19 kind from, or exceed in amount, what is demanded in the pleadings.”). *See also PepsiCo*,  
20 238 F. Supp. 2d at 1174 (stating that a default judgment “shall not be different in kind from  
21 or exceed in amount that prayed for in the [complaint]”). A defaulting defendant is not  
22 deemed to have admitted facts concerning damages alleged in the complaint. *See id.* at  
23 1177 (“Upon entry of default, all well pleaded facts in the complaint are taken as true,  
24 except those relating to damages.”) (citing *TeleVideo Sys.*, 826 F.2d at 917-18).

25 Plaintiff seeks an award of monetary damages in the amount of \$273,211.17,  
26 consisting of (1) service fees in the amount of \$205,033.79, which is calculated based on  
27 § 2.1 and Schedule 1 of the Contract; (2) the finance charges in the amount of \$8,177.38  
28 pursuant to § 3.4 of the Contract; and (3) acceleration of minimum service fees in the

1 amount of \$60,000. In support of its request, Plaintiff has submitted the Contract, the  
2 Declaration of Plaintiff's Vice President of Financial and Sales Operations, and copies of  
3 invoices reflecting the outstanding balance. Based on the evidence presented, the Court  
4 concludes the Plaintiff has sufficiently demonstrated that it is entitled to the requested  
5 damages.

### 6 **C. Motion to Seal**

7 "Historically, courts have recognized a 'general right to inspect and copy public  
8 records and documents, including judicial records and documents.'" *Kamakana v. City  
9 and County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) quoting *Nixon v. Warner  
10 Communs., Inc.*, 435 U.S. 589, 597 & n.7 (1978). "A party seeking to seal a judicial record  
11 then bears the burden of overcoming this strong presumption by meeting the compelling  
12 reasons standard. That is, the party must articulate compelling reasons supported by  
13 specific factual findings . . . that outweigh the general history of access and the public  
14 policies favoring disclosure . . . ." *Id.* at 1178-79 (citations and quotation marks omitted).  
15 The presumed right to access to court proceedings and documents can be overcome "only  
16 by an overriding right or interest 'based on findings that closure is essential to preserve  
17 higher values and is narrowly tailored to serve that interest.'" *Oregonian Publishing Co.  
18 v. United States District Court*, 920 F.2d 1462, 1465 (9th Cir. 1990) quoting *Press-  
19 Enterprise Co. v. Superior Court*, 446 U.S. 501, 510 (1985).

20 "Under the compelling reasons standard, the district court must weight relevant  
21 factors, base its decision on a compelling reason, and articulate the factual basis for its  
22 ruling, without relying on hypothesis or conjecture." *Pintos v. Pacific Creditors Ass'n*, 605  
23 F.3d 665, 679 (9th Cir. 2010) (quotations omitted). "'Relevant factors' include the 'public  
24 interest in understanding the judicial process and whether disclosures of the material could  
25 result in improper use of the material for scandalous or libelous purposes or infringement  
26 upon trade secrets.'" *Id.* at 659 n.6 (citing *Hagestad v. Tragesser*, 49 F.3d 1430, 1434 (9th  
27 Cir. 1995); see also *Kamakana*, 447 F.3d at 1179 ("In general, 'compelling reasons'  
28 sufficient to outweigh the public's interest in disclosure and justify sealing court records

1 exist when such ‘court files might have become a vehicle for improper purposes,’ such as  
2 the use of records to gratify private spite, promote public scandal, circulate libelous  
3 statements, or release trade secrets.”).

4 Plaintiff seeks to seal the Services Agreement it entered into with Defendant because  
5 it contains commercially sensitive business information. ECF No. 9 at 2. Plaintiff asserts  
6 that the “proprietary cloud-based billing and information sharing services to process  
7 laboratory and other medical claims” contained within the Services Agreement could put  
8 Xifin at a competitive disadvantage with future clients and competitors if disclosed. *Id.* at  
9 3. The evidence in the record shows that the Services Agreement contains detailed  
10 information about Xifin’s pricing structure and its proprietary service protocols and  
11 processes, among other information, that could expose Plaintiff to a competitive  
12 disadvantage if revealed. *See In re Electronic Arts*, 298 Fed.Appx. 568, 569 (9th Cir. 2008)  
13 (finding a compelling reason to exist where disclosure would reveal “sources of business  
14 information that might harm a litigant’s competitive standing.”).


15 **Conclusion**

16 IT IS HEREBY ORDERED that Motion for Default Judgment filed by Plaintiff  
17 XIFIN, Inc. is granted. (ECF No. 11). Default Judgment shall be entered against  
18 Defendant Prestige Worldwide Leasing, LLC, in favor of Plaintiff XIFIN, Inc., in the  
19 amount of \$273,211.17. Plaintiff is entitled to post judgment interest at the rate of 10%  
20 per annum from the date of entry of this Judgment until paid.

21 IT IS FURTHER ORDERED that the Motion to File Documents Under Seal filed  
22 by Plaintiff is granted. (ECF No. 9).

23 Plaintiff shall submit a proposed Judgment.

24 Dated: September 17, 2019

25   
26 Hon. William Q. Hayes  
27 United States District Court  
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