

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Fernando Inigo,

Plaintiff,

v.

Express Movers, Inc., a Hawaii
Corporation, d/b/a Movers Hawaii,

Defendant.

Case No.: 3:18-cv-2844-BEN-DEB

**ORDER GRANTING IN PART
PLAINTIFF'S MOTION TO PROVE
DAMAGES**

[ECF Nos. 41, 42, 45]

On August 24, 2020, the Court entered default judgment against Defendant Express Movers, Inc ("Express Movers"). ECF No. 37. This matter now comes before the Court on Plaintiff Fernando Inigo's Motion to Prove Damages.

I. Background

Inigo filed a Complaint against Express Movers on December 17, 2018. ECF No. 1. He initially sought \$39,827.00 in damages, representing the value of household goods and a vehicle he alleged were being unlawfully withheld by Express Movers as the result of a dispute over shipping costs. *Id.* at 9. On April 22, 2020, Express Movers relinquished possession of Inigo's household goods. Mot., ECF No. 42, 7.

On June 24, 2020, the Court granted Mr. Elliot Canter's motion to withdraw as counsel for Express Movers. ECF No. 33. As Local Civil Rule 83.3(j) requires corporations to be represented by counsel, the Court granted Express Movers thirty days

1 to obtain new counsel and for that counsel to file a notice of appearance. *Id.* The Court
2 also delayed the Final Pretrial Conference until August 3, 2020. *Id.*

3 Express Movers failed to appear at the Final Pretrial Conference and no new
4 counsel filed a notice of appearance on its behalf. ECF No. 35. The Court issued an
5 Order to Show Cause, requiring Express Movers to obtain new counsel and warning it
6 that failure to do so could result in sanctions, including striking Express Movers' Answer
7 and entering default judgment against it. ECF No. 36. Express Movers again failed to
8 respond. Accordingly, the Court entered default judgment on August 24, 2020, and
9 granted Inigo leave to file a Motion to Prove Damages. *Id.* Inigo filed his motion, and
10 Express Movers has not responded.¹

11 Inigo seeks damages pursuant to 49 U.S.C. § 14706 for Express Movers' alleged
12 failure to transport his household goods with "reasonable dispatch." Mot., ECF No. 41,
13 3. He no longer seeks damages for the total value of his household goods, but rather
14 damages for a select few items he purchased while his household goods were being
15 withheld by Express Movers. *Id.* at 2-3. He also alleges one large box of kitchen items
16 was lost, entitling him to further damages. *Id.* at 3.

17 **II. Legal Standard**

18 Under Federal Rule of Civil Procedure 8(a)(3), a plaintiff's demand for relief must
19 be specific, and he "must 'prove up' the amount of damages." *Philip Morris USA Inc. v.*
20 *Banh*, Case No. 03-CV-4043-GAF-PJW, 2005 WL 5758392, at *6 (C.D. Cal. Jan. 14,
21 2005). "The general rule of law is that upon default the factual allegations of the
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24 ¹ Igor Stojadinovic, purportedly a representative of Express Movers, sent a letter to the
25 Court dated October 5, 2020, requesting a delay in the hearing on this motion. ECF No.
26 45. Mr. Stojadinovic stated he could not travel due to COVID-19 concerns. *Id.* The
27 Court vacated the hearing on this motion and the matter was submitted in accordance
28 with Local Civil Rule 7.1(d)(1). Accordingly, the request is **denied as moot**. The Court
also rejects the letter because it was submitted on behalf of a corporate defendant by a
non-attorney. *See* Civ. L. R. 83.3(j).

1 complaint, except those relating to the amount of damages, will be taken as true.”
2 *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987) (citations
3 omitted). Relief following a motion for entry of default judgment is limited to that
4 identified in the complaint. *See* Fed. R. Civ. P. 54(c) (“A default judgment must not
5 differ in kind from, or exceed in amount, what is demanded in the pleadings.”); *see also*
6 *PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1174 (C.D. Cal. 2002) (stating
7 that a default judgment “shall not be different in kind from or exceed in amount that
8 prayed for in the [complaint]”).

9 **III. Analysis**

10 Inigo seeks an award of \$2,107.20 for the failure to transport household goods with
11 reasonable dispatch and \$300.00 for damages incurred as the result of a lost large box of
12 kitchen items. Mot., ECF No. 41, 3. As a preliminary matter, the Court finds these
13 damages are not different in kind from and do not exceed the amount of what was
14 demanded in Inigo’s Complaint. Instead, Inigo’s motion reasonably reduces the damages
15 sought based on Express Movers’ decision to release his household goods.

16 In support of his claimed damages, Inigo attached a declaration to his motion
17 stating that Express Movers refused to deliver his household goods to him as contracted
18 because a dispute arose over the amount due to Express Movers. Decl., ECF No. 41-1, ¶¶
19 3-5. Inigo alleged that Express Movers refused to relinquish possession of his household
20 goods for over nine months, and that Inigo was required to purchase a new washing
21 machine, washer hose, queen mattress, box spring, and television for his home. *Id.* at ¶
22 10. The total cost of these items was \$2,107.20, evidenced by receipts attached to Inigo’s
23 declaration. *Id.* at ¶ 10, Ex. C. Inigo further alleges one large box of kitchen items was
24 not included in the items eventually released by Express Movers. *Id.* at ¶ 13. He
25 estimates those kitchen items are valued at \$300.00.

26 The Carmack Amendment states that a carrier providing transportation of goods is
27 liable “for the actual loss or injury to the property” caused by that carrier. 49 U.S.C. §
28 14706(a)(1). The carrier’s failure to issue a bill of lading does not affect its liability. *Id.*

1 While the statute does not explicitly provide for recovery of “reasonably foreseeable
2 damages,” other courts have consistently recognized that a carrier may be liable for all
3 “reasonably foreseeable consequential damages resulting from a breach of the contract of
4 carriage.” *Ready Transp., Inc. v. CRST Malone, Inc.*, No. 07-CV-0905-JTL, 2009 WL
5 10669257, at *12 (C.D. Cal. Jan. 13, 2009) (citing *Air Prods. & Chems., Inc. v. Illinois*
6 *Central Gulf R. Co.*, 721 F.2d 483, 485 (5th Cir. 1983), cert. denied, 469 U.S. 832
7 (1984)). The Supreme Court has likewise stated that “[t]he words of the [Carmack
8 Amendment] ‘are comprehensive enough to embrace all damages resulting from any
9 failure to discharge a carrier’s duty with respect to any part of the transportation to the
10 agreed destination.’” *Southeastern Express Co. v. Pastime Amusement Co.*, 299 U.S. 28,
11 29 (1936) (quoting *New York, Philadelphia & Norfolk R.R. Co. v. Peninsula Produce*
12 *Exch. of Maryland*, 240 U.S. 34, 38 (1916)).

13 Here, Inigo has pleaded that Express Movers refused to relinquish possession of
14 his household goods despite Inigo’s offer to pay 110% of the estimated costs. *See* 49
15 C.F.R. § 375.407 (requiring a carrier to relinquish possession of household goods if the
16 individual shipper pays 110% of the non-binding estimate on a collect-on-delivery
17 shipment). Compl., ECF No. 1, ¶ 29. Following Inigo’s offer, Express Movers
18 continued to withhold delivery of Inigo’s household goods for more than nine months.
19 As noted above, the Court accepts these well pleaded allegations as true. *See TeleVideo*
20 *Sys., Inc.*, 826 F.2d at 917-18.

21 Applying those pleadings to Inigo’s claimed damages, the Court finds that the
22 damages sought for purchase of a replacement television, queen mattress, and box spring
23 would be reasonably foreseeable and are thus recoverable. A shipper like Inigo quite
24 reasonably believes that, once the needed time for transit has passed, he will be able to
25 rest on a bed. Today, he could also expect a common comfort like a television. While
26 the Court would also conclude Inigo has a need for a washing machine, Inigo’s inventory
27 did not show he shipped a washing machine. Compl., ECF No. 1, Ex. B. Accordingly,
28 the Court finds Express Movers could not reasonably have anticipated Inigo would buy a

1 replacement washing machine and washer hose. Inigo has sufficiently proved his
2 remaining damages with respect to the lost large box of kitchen items.

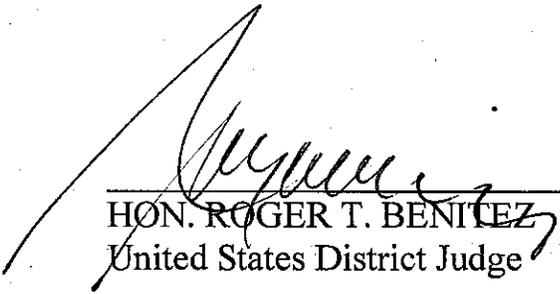
3 The Court finds that Inigo has therefore sufficiently proved damages in the amount
4 of \$1,838.97, representing Inigo's claimed damages less the \$538.23 he incurred for a
5 new washing machine and washer hose.

6 **IV. Conclusion**

7 For the foregoing reasons, Plaintiff's Motion to Prove Damages is **GRANTED in**
8 **part**. The Clerk of Court shall enter judgment in favor of Plaintiff in the amount of
9 \$1,838.97 in total damages. Plaintiff is granted leave to file a Motion for Attorney's Fees
10 in accordance with Federal Rule of Civil Procedure 54 and 49 U.S.C. § 14708. A request
11 for Costs may be submitted to the Clerk of Court.

12 **IT IS SO ORDERED.**

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14 Date: November 18, 2020


15 HON. ROGER T. BENITEZ
16 United States District Judge
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