

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Robert E. Blackburn**

Civil Action No. 13-cv-02993-REB-BNB

SIMONA RISORTO,

Plaintiff,

v.

MALCOLM S. GERALD & ASSOCIATES, INC.,

Defendant.

**ORDER ADOPTING RECOMMENDATION OF THE
UNITED STATES MAGISTRATE JUDGE**

Blackburn, J.

The matter before me is the **Recommendation of United States Magistrate Judge** [#20],¹ filed March 13, 2014. No objection having been filed, I review the recommendation for plain error only. ***See Morales-Fernandez v. Immigration & Naturalization Service***, 418 F.3d 1116, 1122 (10th Cir. 2005). Finding no such error in the magistrate judge's recommended disposition, I find and conclude that the recommendation should be approved and adopted.

As more thoroughly set forth in the recommendation, this case was filed in this court under the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 *et seq.*, affording me federal question jurisdiction under 28 U.S.C. § 1331. Plaintiff duly served defendant in accordance with Fed. R. Civ. P. 4(h)(1). (***See Affidavit of Service*** [#5],

¹ "[#20]" is an example of the convention I use to identify the docket number assigned to a specific paper by the court's case management and electronic case filing system (CM/ECF). I use this convention throughout this order.

filed November 25, 2013.) Personal jurisdiction is proper in this district. Defendant failed to answer or otherwise respond within the time permitted by law. The clerk of the court entered default against defendant under Fed. R. Civ. P. 55(a) on November 29, 2013 [#14]. Plaintiff therefore is entitled to default judgment against these defendants under Fed. R. Civ. P. 55(b).

In failing to respond or otherwise appear, defendant has admitted the factual allegations of the complaint other than those relating to damages. **See FED. R. CIV. P. 8(d); see also *Burlington Northern Railroad Co. v. Huddleston***, 94 F.3d 1413, 1415 (10th Cir. 1996); 10A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, **Federal Practice and Procedure** § 2688 at 58-59 (3rd ed. 1998). The magistrate judge has described how these allegations establish defendant's violation of the FDCPA and plaintiff's entitlement to statutory damages and attorney fees and costs thereunder. **(Recommendation ¶¶ 4-13 at 3-6.)** I concur with the magistrate judge's assessment that the admitted allegations establish plaintiff's entitlement to the full amount of statutory damages available under the FDCPA and to attorney fees as assessed by the magistrate judge.²

I therefore find and conclude that the recommendation should be approved and adopted, and the motion for default judgment granted.

THEREFORE, IT IS ORDERED as follows:

² The magistrate judge reduced plaintiff's fee request, and plaintiff has not objected to his calculation of the lodestar. I perceive no error, much less plain error, in his determinations in this regard either.

1. That the **Recommendation of United States Magistrate Judge** [#20], filed March 13, 2014, is **APPROVED AND ADOPTED** as an order of this court;

2. That the **Plaintiff's Motion for Default Judgment and Attorney's Fees** [#17], filed February 12, 2014, is **GRANTED**;

3. That default judgment **SHALL ENTER** for the plaintiff, Simona Risorto, against the defendant, Malcolm S. Gerald & Associates, Inc., on plaintiff's claim for statutory damages under the FDCPA;

4. That for defendant's violation of the FDCPA, plaintiff is **AWARDED** \$1,000.00 in statutory damages and \$2,417.50 in attorney fees; and

5. That plaintiff is **AWARDED** her costs, to be taxed by the clerk of the court under Fed. R. Civ. P. 54(d)(1) and D.C.COLO.LCivR 54.1.

Dated April 2, 2014, at Denver, Colorado.

BY THE COURT:



Robert E. Blackburn
United States District Judge