

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 Ellie Sternquist,

Case No.: 2:19-cv-00448-JAD-BNW

4 Plaintiff

5 v.

**Order Granting in Part Motion
for Default Judgment**

6 Humble Hearts LLC,

[ECF No. 15]

7 Defendant

8 Plaintiff Ellie Sternquist sues Humble Hearts LLC for age discrimination and retaliation
9 under various federal and state laws after she was fired.¹ Humble Hearts has failed to appear in
10 this action since Sternquist filed her complaint more than two years ago. The Clerk of Court
11 entered default against Humble Hearts, and Sternquist moves for a default judgment and for
12 attorneys' fees.² Taking her complaint's allegations as true and applying the factors articulated
13 in *Eitel v. McCool*,³ I find that default judgment is warranted exclusively for Sternquist's age-
14 discrimination claims under 29 U.S.C. § 623 and NRS § 613.330 et seq., but not her remaining
15 claims. I deny Sternquist's request for attorneys' fees as premature and because it does not
16 comply with Local Rule 54-14. And I direct the Clerk of Court to enter default judgment in the
17 amount of \$26,175.00 against Humble Hearts and close this case.

18 **Background**

19 Sternquist began working for Humble Hearts in December 2017 as the Clinical Director
20 of the Adolescent Intensive Outpatient Program.⁴ Before being hired, she informed Humble

21 _____
22 ¹ ECF No. 1.

23 ² ECF No. 15.

³ *Eitel v. McCool*, 782 F.2d 1470, 1471–72 (9th Cir. 1986).

⁴ ECF No. 1 at ¶ 13.

1 Hearts that, while she was qualified for the job, she did not yet have a Nevada license.⁵ Early on
2 in her tenure, Sternquist noticed unethical practices at the company, violations of the Health
3 Insurance Portability and Accountability Act (HIPAA), and other safety issues, and she
4 repeatedly brought her concerns to her program manager’s attention.⁶ Shortly after sending an
5 email memorializing her concerns to Humble Hearts’ director, however, she was fired—
6 purportedly because the company wanted someone with “different credentials.”⁷ Sternquist
7 theorizes that this stated reason was mere pretext: she had not been reprimanded or received
8 negative evaluations, and she was terminated because she was over 40 years old and because she
9 raised concerns.⁸

10 So Sternquist filed a complaint against Humble Hearts, alleging age discrimination and
11 unlawful retaliation under Nevada and federal law.⁹ On March 22, 2019, Sternquist served
12 Humble Hearts with the summons and complaint, only to receive radio silence from the
13 defendants.¹⁰ Because Humble Hearts failed to appear in this action, the Clerk of Court entered
14 default against the company on December 9, 2019.¹¹ Sternquist now moves for default judgment
15 against Humble Hearts and for an award of attorneys’ fees.¹²

19 ⁵ *Id.* at ¶¶ 14–15.

20 ⁶ *Id.* at ¶¶ 18–19, 21, 27, 29.

21 ⁷ *Id.*

22 ⁸ *Id.* at ¶¶ 16, 33–34.

23 ⁹ ECF No. 1.

¹⁰ ECF No. 4.

¹¹ ECF No. 12.

¹² ECF No. 15.

1 **Discussion**

2 **I. Sternquist merits default judgment on some, but not all, of her claims.**

3 **A. Default-judgment standard**

4 Federal Rule of Civil Procedure 55(b)(2) allows a plaintiff to obtain a default judgment
 5 after the Clerk of Court enters default based on a defendant's failure to defend. After default is
 6 entered, the complaint's factual allegations are taken as true, except "necessary facts not
 7 contained in the pleadings," facts related to damages, and insufficiently pled claims.¹³ In
 8 exercising the discretion to determine whether to grant a motion for default judgment, trial courts
 9 are guided by the seven factors outlined by the Ninth Circuit in *Eitel v. McCool*:

10 (1) the possibility of prejudice to the plaintiff; (2) the merits of the
 11 plaintiff's substantive claim; (3) the sufficiency of the complaint;
 12 (4) the sum of money at stake in the action; (5) the possibility of a
 13 dispute concerning material facts; (6) whether the default was due
 14 to excusable neglect; and (7) the strong policy underlying the
 15 Federal Rules of Civil Procedure favoring decisions on the
 16 merits.¹⁴

14 **B. The *Eitel* factors weigh in favor of granting default judgment in part.**

15 **1. The first, fifth, sixth, and seventh *Eitel* factors**

16 In cases like this one, in which the defendants have not participated in the litigation, the
 17 first, fifth, sixth, and seventh *Eitel* factors are easily satisfied. The first factor clearly weighs in
 18 favor of default judgment—if I were to deny her motion, Sternquist would be without another
 19 recourse of recovery or remedy, incurring significant prejudice. And the fifth and sixth factors
 20 either weigh in favor of default judgment or are neutral. Due to Humble Hearts' failure to
 21 participate, there is no dispute over material facts (except as to damages) and no indication that

22 _____
 23 ¹³ See *Cripps v. Life Ins. Co.*, 980 F.2d 1261, 1267 (9th Cir. 1992); *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

¹⁴ *Eitel*, 782 F.2d at 1471–72.

1 default is due to excusable neglect. Although the seventh factor generally weighs against default
 2 judgment because cases “should be decided on their merits whenever reasonably possible,”¹⁵ it is
 3 outweighed by the other factors here.

4 **2. The second and third *Eitel* factors**

5 The second and third *Eitel* factors require Sternquist to demonstrate that she may recover
 6 under her stated claims.¹⁶ “Of all the *Eitel* factors, courts often consider the second and third
 7 factors to be the most important.”¹⁷ Sternquist seeks recovery for (1) age discrimination in
 8 violation of N.R.S. § 613.330, 29 U.S.C. § 623, and 42 U.S.C. § 2000e; (2) retaliation in
 9 violation of 42 U.S.C. § 2000e–3 and N.R.S. § 613.340; and (3) retaliatory discharge in violation
 10 of public policy.¹⁸ After accepting as true all of the facts alleged in her complaint, I find that
 11 Sternquist can only recover under 29 U.S.C. § 623 and NRS § 613.330.

12 **a. Age-discrimination claims**

13 Sternquist seeks relief under two federal statutes and one Nevada statute for workplace
 14 discrimination, each of which offers a different path to recovery. 42 U.S.C. § 2000e, better
 15 known as Title VII, prohibits employment discrimination based on race, color, religion, sex, and
 16 national origin.¹⁹ It provides no recovery for age-based discrimination.²⁰ NRS § 613.330 is

17
 18 ¹⁵ *Eitel*, 728 F.2d at 1472.

19 ¹⁶ *See Danning v. Lavine*, 572 F.2d 1386, 1388 (9th Cir. 1978).

20 ¹⁷ *Vietnam Reform Party v. Viet Tan – Vietnam Reform Party*, 416 F. Supp. 3d 948, 962 (N.D.
 Cal. 2019).

21 ¹⁸ ECF No. 1.

22 ¹⁹ 42 U.S.C. § 2000e–2.

23 ²⁰ *Smith v. City of Jackson, Miss.*, 544 U.S. 228, 232 (2005) (“During the deliberations that preceded the enactment of the Civil Rights Act of 1964, Congress considered and rejected proposed amendments that would have included older workers among the classes protected from employment discrimination.”) (citation omitted).

1 “almost identical” to Title VII, except that it allows recovery for age-based discrimination.²¹
2 Courts apply the same analysis for both claims,²² requiring a plaintiff to show that she (1)
3 belongs to a protected class; (2) was qualified for the position; (3) was subject to an adverse
4 employment action; and (4) was similarly situated to individuals outside of her protected class
5 that were treated more favorably than she was or that her employer terminated her with a
6 discriminatory motive.²³ Likewise, 29 U.S.C. § 623—otherwise known as the Age
7 Discrimination in Employment Act—permits a plaintiff to recover for workplace discrimination
8 if she can show that, at the time of the challenged conduct, “she was at least forty years old” and
9 “performing her job satisfactorily,” only to be “discharged” and (1) “either replaced by a
10 substantially younger employee with equal or inferior qualifications” or (2) “discharged under
11 circumstances otherwise giving rise to an inference of age discrimination.”²⁴ “An inference of
12 discrimination can be established by showing [that] the employer had a continuing need for the
13 employee [’s] skills and services in that their various duties were still being performed . . . or by
14 showing that others not in their protected class were treated more favorably.”²⁵

15 Sternquist cannot recover under Title VII because age is not a protected class under the
16 statute. But she can recover under the ADEA and Nevada law. The Ninth Circuit has held that a
17 plaintiff who alleges in her complaint that she is over 40, “received consistently good
18 performance reviews[,]” and was “terminated from employment while younger workers in the
19

20 ²¹ *Apeceche v. White Pine Cnty.*, 615 P.2d 975, 977 (Nev. 1980); Nev. Rev. Stat. § 613.330.

21 ²² *Id.* at 977–78.

22 ²³ *Reynaga v. Roseburg Forest Prod.*, 847 F.3d 678, 690–91 (9th Cir. 2017) (citing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973)).

23 ²⁴ *Sheppard v. David Evans & Assoc.*, 694 F.3d 1045, 1049 (9th Cir. 2012) (alterations and citation omitted).

24 ²⁵ *Id.* at 1049–50 (citation omitted).

1 same position kept their jobs” states an “entirely plausible scenario of employment
2 discrimination.”²⁶ Sternquist’s allegations adequately check those boxes. She alleges that (1)
3 she was at least 40 years old, a protected class under both laws;²⁷ (2) she had not received any
4 discipline during her employment; (3) she was qualified for the job; (4) she was discharged by
5 Humble Hearts; and (4) no other similarly situated persons were terminated, giving rise to an
6 inference of age-based discrimination.²⁸

7 ***b. Retaliation claims***

8 Sternquist alleges that Humble Hearts retaliated against her because she opposed and
9 expressed concerns about its HIPAA and Medicaid fraud violations. Retaliation claims under 42
10 U.S.C. § 2000e–3 and NRS § 613.340 requires the plaintiff to demonstrate that (1) she engaged
11 in a protected activity; (2) she suffered an adverse employment action; and (3) “a causal link
12 exists between the protected activity and the adverse action.”²⁹ Under these statutes, “protected
13 activity” is defined somewhat narrowly; relevant here, both Nevada and state law require a
14 plaintiff to prove that her protected activity involved opposition to “any practice made an
15 unlawful employment practice.”³⁰ Reporting HIPAA and Medicaid violations do not fall within
16 the ambit of protected activity under either law, as they do not involve those laws’ protections

17
18
19 ²⁶ *Id.* at 1050 (alterations and citation omitted).

20 ²⁷ See Nev. Rev. Stat. § 613.350(3) (“It is not an unlawful employment practice for an employer
21 to fail or refuse to hire or to discharge a person . . . on the basis of his or her age if the person is
less than 40 years of age.”); 29 U.S.C. § 623(a) (“The prohibitions in this chapter shall be limited
to individuals who are at least 40 years of age.”).

22 ²⁸ See *Sheppard*, 694 F.3d at 1050 (internal quotations omitted).

23 ²⁹ *Manatt v. Bank of Am.*, 339 F.3d 792, 800 (9th Cir. 2003) (citation omitted).

³⁰ 42 U.S.C. § 2000e–3; see also Nev. Rev. Stat. § 613.340 (making “oppos[ing] any practice
made an unlawful employment practice by NRS 613.310 to 613.4383” a protected activity).

1 against discrimination on the basis of “race, color, religion, sex, or national origin,”³¹ or “sexual
2 orientation, gender identity or expression, age, disability or national origin.”³² In short, HIPAA
3 and Medicaid violations, although arguably unethical, do not give rise to Title VII or NRS
4 § 613.330 retaliation claims. Thus, Sternquist’s retaliation claims lack merit.

5 *c. Claims for retaliatory discharge in violation of public policy*

6 Sternquist asserts that she was also terminated in violation of public policy because she
7 complained about Humble Hearts’ HIPAA violations.³³ To prevail under Nevada law for such a
8 claim, a plaintiff must show that her termination was “based upon the employee’s refusing to
9 engage in conduct that was violative of public policy or upon the employee’s engaging in
10 conduct which public policy favors[.]”³⁴ Nevada imposes an additional requirement that the
11 plaintiff must have reported the illegal activity to the appropriate authorities, and not just to her
12 employer.³⁵ While Sternquist satisfies the first requirement, she fails to satisfy the second
13 because she only internally reported the illegal activities to Humble Hearts’ employees and the
14 previous owner, and not to the appropriate authorities. Thus, her retaliatory discharge claims
15 lack merit.

16
17
18

³¹ 42 U.S.C. § 2000e–2.

19 ³² Nev. Rev. Stat. § 613.330.

20 ³³ ECF No. 1 at ¶¶ 67, 74, 81.

21 ³⁴ *Bailey v. Sw. Gas Co.*, 275 F.3d 1181, 1187 (9th Cir. 2002) (quoting *Bigelow v. Bullard*, 901 P.2d 630, 632 (Nev. 1995)).

22 ³⁵ *Wiltsie v. Baby Grand Corp.*, 774 P.2d 432, 433–44 (Nev. 1989) (finding that the plaintiff was
23 not protected because he “chose to report the activity to his supervisor rather than the appropriate
authorities” and was thus “merely acting in a private or proprietary manner”) (citations omitted);
Bielser v. Pro. Sys. Corp., 177 F. App’x 655, 656 (9th Cir. 2006) (finding that the plaintiff’s
failure to report to the proper authorities was “fatal to her tortious[-]discharge claim”).

1 In sum, Sternquist has shown that some, but not all, of her claims have merit and that her
2 complaint is sufficient to warrant recovery. But complete recovery under all theories of injury is
3 not required for entry of default judgment. So I find that the second and third *Eitel* factors weigh
4 in favor of granting her motion.

5 **3. The fourth *Eitel* factor**

6 Sternquist seeks \$26,175.00 in lost wages and \$10,000.00 in punitive damages.³⁶ *Eitel*'s
7 sum-of-money factor requires me to consider the amount of money at stake in relation to the
8 seriousness of Humble Heart's conduct.³⁷ Default judgment is disfavored if the sum of money at
9 stake is "completely disproportionate or inappropriate"³⁸ or if the plaintiff cannot recover her
10 damages under the laws for which she seeks a remedy.³⁹ Because I find that Sternquist can only
11 recover under the ADEA and NRS § 613.330, which do not authorize punitive damages, she may
12 be awarded compensatory damages only.⁴⁰ So while I necessarily decline to award her \$10,000
13 in punitive damages, I do find that Sternquist's requested amount of \$26,175.00 in lost wages is
14 proportional to her injury. Age discrimination is a serious violation of both state and federal law,
15 and Sternquist has adequately proven that the requested amount is what she reasonably would

16
17

³⁶ ECF No. 15–1.

18 ³⁷ *Twentieth Century Fox Film Corp. v. Streeter*, 438 F. Supp. 2d 1065, 1071 (D. Ariz. 2006)
19 (quoting *PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1176 (C.D. Cal. 2002)).

³⁸ *Id.*

20 ³⁹ *See, e.g., Ahlmeyer v. Nev. Sys. of Higher Educ.*, 555 F.3d 1051, 1059 (9th Cir. 2009)
21 ("Compensatory damages for pain and suffering and punitive damages are not available under
the ADEA").

22 ⁴⁰ *Id.*; *see also Stilwell v. City of Williams*, 831 F.3d 1234, 1247 (9th Cir. 2016) ("ADEA
23 plaintiffs may recover lost wages and liquidated damages from employers"); *Sands Regent v.*
Valgardson, 777 P.2d 898, 900 (Nev. 1989) (finding that "[u]nder NRS 613.420 and NRS
233.170, respondents were entitled to 'back pay for a period not to exceed two years after the
date of the most recent unlawful practice.'").

1 have earned at Humble Hearts from the time of her termination until she secured other
2 employment.⁴¹ Therefore, this factor weighs in favor of default judgment.

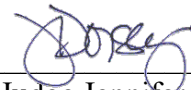
3 **II. An award of attorneys' fees is premature.**

4 This court's Local Rule 54-14 requires a host of back-up documentation to be submitted
5 in support of an attorneys' fees request, and it provides that the "[f]ailure to provide [that]
6 information . . . may be deemed a consent to the denial of the motion."⁴² Because Sternquist did
7 not support her fees request with the information that the local rule requires, I deny it without
8 prejudice.

9 **Conclusion**

10 IT IS THEREFORE ORDERED that the plaintiff's motion for default judgment [ECF
11 No. 15] is **GRANTED IN PART** as stated herein.

12 IT IS FURTHER ORDERED that Sternquist's request for attorneys' fees is **DENIED**
13 without prejudice. The Clerk of Court is directed to **ENTER JUDGMENT** in favor of plaintiff
14 on her **29 U.S.C. § 623 and NRS § 613.330 claims in the amount of \$26,175.00 against**
15 **Humble Hearts and CLOSE THIS CASE.**

16
17 

18 U.S. District Judge Jennifer A. Dorsey

19 July 23, 2021

20
21
22
23 ⁴¹ See ECF No. 15-1.

⁴² L.R. 54-14(c).