

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

RANDALEE PAIGE WINTER,

Plaintiff,

v.

**GUARD FORCE INTERNATIONAL,
INC.,**

Defendant.

Case No. 3:16-cv-2408-SI

OPINION AND ORDER

Michael H. Simon, District Judge.

Plaintiff Randalee Paige Winter (“Plaintiff”) brings this lawsuit against her former employer, Defendant Guard Force International, Inc. (“Defendant”), alleging that Defendant retaliated against her when she reported that her supervisor was asleep on duty. Defendant failed to answer or otherwise respond to Plaintiff’s Complaint, and on February 21, 2017, the Court entered an Order of Default against Defendant. ECF 6. Before the Court is Plaintiff’s motion for default judgment against Defendant. For the reasons that follow, Plaintiff’s motion is granted in part and denied in part.

STANDARDS

Under Federal Rule of Civil Procedure 55(a), the Clerk of the Court is required to enter an order of default if a party against whom affirmative relief is sought fails timely to answer or otherwise defend an action. Fed. R. Civ. P. 55(a) (“When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party’s default.”). Upon the entry of default, the Court accepts “the well-pleaded factual allegations” of the complaint “as true.” *DIRECTV, Inc. v. Hoa Huynh*, 503 F.3d 847, 854 (9th Cir. 2007) (quoting *Cripps v. Life Ins. Co. of N. Am.*, 980 F.2d 1261, 1267 (9th Cir. 1992)); *see also Geddes v. United Fin. Grp.*, 559 F.2d 557, 560 (9th Cir. 1977). The court, however, does not accept as true facts that are not well-pleaded, conclusions of law, or facts relating to the amount of damages. *DIRECTV*, 503 F.3d at 854; *Geddes*, 559 F.2d at 560; *see also Derek Andrew, Inc. v. Poof Apparel Corp.*, 528 F.3d 696, 702 (9th Cir. 2008) (“The general rule of law is that upon default the factual allegations of the complaint, except those relating to the amount of damages, will be taken as true.” (quoting *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987))).

After default has been entered against a defendant, a court may enter a default judgment against that defendant. *See* Fed. R. Civ. P. 55(b). “The district court’s decision whether to enter a default judgment is a discretionary one.” *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980); *see also Dreith v. Nu Image, Inc.*, 648 F.3d 779, 786 (9th Cir. 2011) (noting that a district’s court decision whether to enter a default judgment is reviewed for abuse of discretion). In *Eitel v. McCool*, 782 F.2d 1470 (9th Cir. 1986), the Ninth Circuit set out factors to guide a district court’s consideration of whether to enter a default judgment. *See DIRECTV*, 503 F.3d at 852 (noting that *Eitel* “set[] out factors to guide district court’s determination regarding the appropriateness of granting a default judgment”).

The Ninth Circuit in *Eitel* held:

Factors which may be considered by courts in exercising discretion as to the entry of a default judgment include: (1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff's substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at stake in the action, (5) the possibility of a dispute concerning material facts, (6) whether the default was due to excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

782 F.2d at 1471-72. The “starting point” of the court’s analysis, however, “is the general rule that default judgments are ordinarily disfavored.” *Id.* at 1472.

BACKGROUND

Defendant provided security services for the U.S. Army Corps of Engineers (the “Corps”). Plaintiff worked as a security guard for Defendant from November 2015 through March 2016. On December 30, 2015, a security specialist for the Corps questioned Plaintiff regarding a report that Plaintiff’s supervisor, Lee Parker, was sleeping while on duty. Plaintiff emailed pictures of Parker sleeping to the security specialist. After participating in the investigation of Parker, Parker retaliated against, harassed, and intimidated Plaintiff until the termination of her employment. Plaintiff complained about Parker’s behavior to her union, but Parker persisted. In January 2016, Plaintiff lost her federal security clearance, and Defendant did not permit Plaintiff to work for the next month. When Plaintiff returned to work in February 2016, Parker continued to harass and retaliate against Plaintiff. Defendant terminated Plaintiff’s employment on March 6, 2016.

Plaintiff brings claims for retaliation under Or. Rev. Stat. § 659A.199, retaliation under Or. Rev. Stat. § 659A.030, intentional infliction of emotional distress, and wrongful discharge in violation of Oregon public policy. Plaintiff filed a motion for default judgment on June 12, 2017. ECF 7. On June 26, 2017, the Court denied Plaintiff’s motion, granting Plaintiff leave to “file a

renewed motion for default judgment with supporting arguments and evidence.” ECF 8. The Court observed that “Plaintiff ha[d] not provided any arguments or evidence to support [her] claim for damages.” ECF 8. Plaintiff filed a renewed motion for default judgment on July 10, 2017. ECF 9.

DISCUSSION

The Court finds that the factual allegations in the Complaint establish the elements of Plaintiff’s claims. The Court also finds that the *Eitel* factors weigh in favor of entering a default judgment. The Court may not accept as true the allegations relating to damages. Thus, Plaintiff attaches her own declaration; her sister’s declaration; her work schedule while employed by Defendant; and her paystubs for the months of November and December 2015 and the period from February 21, 2016, through March 5, 2016.

First, Plaintiff seeks \$35,987.20 in economic damages (\$29,155.20 for lost wages and \$6,832.00 for lost health care reimbursement). These economic damages represent: (1) ten months of lost earnings at a gross rate of \$3,369.60 per month for the month of January 2016, when Plaintiff was not permitted to work, and for the months of March 2016 through November 2016, when Plaintiff was searching for, but unable to find work; and (2) eight months of lost earnings at a gross rate of \$286.40 per month for the months of November 2016 through June 2017, when Plaintiff was working for another employer that paid less than Defendant. The Court finds that Plaintiff’s declaration and attached paystubs and work schedule justify these damages.

Second, Plaintiff seeks \$20,620.80 for six years of lost future wages, but has not provided any evidence showing that there is a “reasonable probability” that she “would have earned a particular amount of income in the future.” *Tadsen v. Praegitzer Indus., Inc.*, 324 Or. 465, 473 (1996). The Court has already given Plaintiff leave to file a renewed motion for default judgment and additional declarations and exhibits and declines to give Plaintiff a third opportunity to

support her motion. On the record before the Court, there is no support for damages for future wages.

Third, Plaintiff asserts that Defendant's and Parker's behavior caused her to suffer anxiety and depression. Plaintiff seeks \$248.00 in out-of-pocket medical expenses that she incurred in obtaining treatment for her emotional condition. The Court finds that Plaintiff's declaration adequately supports these expenses. Plaintiff also seeks \$750,000.00 in non-economic damages for her emotional distress. In support of these damages, Plaintiff relies on her and her sister's declarations, which detail the stress and anxiety that Parker's threatening and intimidating behavior caused Plaintiff. Plaintiff, however, has not filed any legal argument in support of her demand for non-economic damages, including any emotional distress damage awards in similar employment retaliation cases in Oregon. *Cf. Kroske v. U.S. Bank Corp.*, 432 F.3d 976, 980 (9th Cir. 2005) ("In determining the amount in controversy, the district court properly considered . . . emotional distress damage awards in similar age discrimination cases in Washington."). Without evidence of similar awards, the Court cannot determine whether \$750,000.00 is an appropriate award in this case. Thus, Plaintiff has not met her burden of demonstrating her entitlement to non-economic damages.

Finally, Plaintiff seeks permanent injunctive relief "enjoining Defendant, its officers, employees, and agents from engaging in any discrimination, retaliation or harassment," but offers no legal argument in support of the entry of such an injunction. The Court finds that such a broad injunction is unwarranted.

CONCLUSION

Plaintiff's Motion for Default Judgment (ECF 9) is GRANTED in part and DENIED in part. Plaintiff is entitled to \$36,235.20 in economic damages (\$35,987.20 for back pay and \$248.00 for out-of-pocket medical expenses).

IT IS SO ORDERED.

DATED this 25th day of July, 2017.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge