

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Coston v. Nangalama

Coston v. Nangalama · No. 2:10-cv-02009-DC-EFB (PC) · Decided June 13, 2025

SUMMARY

The document contains findings and recommendations addressing plaintiff Daniel Murphy Coston’s motion for default judgment against defendant Randall Hale in a 42 U.S.C. § 1983 action alleging deliberate indifference to serious medical needs. The magistrate judge concluded that the requested compensatory and punitive damages were speculative and insufficiently supported, and recommended denying the motion without prejudice. The findings and recommendations were issued for consideration by the assigned district judge.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Edmund F. Brennan, United States Magistrate Judge
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	June 13, 2025
DOCKET	2:10-cv-02009-DC-EFB (PC)
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff moved under Federal Rule of Civil Procedure 55 for default judgment against defendant Randall Hale after the clerk entered default. The magistrate judge issued findings and recommendations recommending denial without prejudice.
STANDARD OF REVIEW	Entry of default judgment under Federal Rule of Civil Procedure 55 is committed to the district court's sound discretion and is evaluated under the seven Eitel factors. Damages must be proven and are not established merely by default.
PRECEDENTIAL VALUE	nonprecedential

TOPICS

- default judgment
- default
- civil procedure
- prisoners rights
- section 1983

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether plaintiff was entitled to entry of default judgment under Federal Rule of Civil Procedure 55 after default had been entered against Hale.
2. Whether plaintiff's requested compensatory and punitive damages were sufficiently proven, non-speculative, and proportionate to the harm attributable to Hale.
3. Whether the Eitel factors supported entry of default judgment despite the possibility that Hale's nonparticipation resulted from excusable neglect.

HOLDINGS

1. Entry of default does not automatically entitle a plaintiff to a court-ordered default judgment; the court must exercise discretion under Federal Rule of Civil Procedure 55 and consider the Eitel factors.
2. Default admits well-pleaded factual allegations relating to liability, but it does not establish damages, legally insufficient claims, conclusions of law, or facts not contained in the pleadings.
3. A plaintiff seeking default judgment on a § 1983 claim must provide evidence establishing that the requested compensatory damages are fair, reasonable, non-speculative, and attributable to the particular defendant; plaintiff's unsupported \$100,000 request did not satisfy that requirement.

KEY QUOTATIONS

"A defendant's default, however, does not automatically entitle the plaintiff to a court-ordered judgment." (at 2)

"Accordingly, the undersigned recommends that the court deny plaintiff's motion for entry of default judgment against defendant Hale without prejudice to its renewal, supported by argument and any evidence plaintiff may choose to offer, concerning the Eitel factors and plaintiff's claimed damages." (at 8)

FACTUAL BACKGROUND

Plaintiff alleged that vocational nurse Randall Hale abruptly discontinued prescribed morphine used to treat plaintiff's chronic condition and ignored plaintiff's resulting complaints of pain. Plaintiff alleged that the discontinuation caused additional pain and withdrawal symptoms. Hale participated in the litigation for years, but after his counsel withdrew in 2022 he stopped appearing, and documents served on him were returned undeliverable.

PROCEDURAL HISTORY

Plaintiff filed a 42 U.S.C. § 1983 action alleging deliberate indifference to serious medical needs arising from the discontinuation of prescribed morphine. Defendant Hale initially answered, participated in summary-judgment proceedings and two trials, and later ceased participating after his counsel withdrew. The court struck Hale's answer and entered default on May 30, 2024. Plaintiff then sought \$100,000 in compensatory damages, \$20,000 in punitive damages, attorney fees, costs, and post-judgment interest. The magistrate judge

recommended denying the motion without prejudice because the requested damages were speculative and unsupported and the record suggested possible excusable neglect.

DISPOSITION

other

REMAND INSTRUCTIONS

None. The motion for entry of default judgment was recommended to be denied without prejudice, allowing plaintiff to renew it with argument and evidence addressing the Eitel factors and claimed damages.

CASES CITED

- PepsiCo, Inc. v. Cal. Sec. Cans, 238 F. Supp. 2d 1172, 1174, 1176-77 (C.D. Cal. 2002)
- Draper v. Coombs, 792 F.2d 915, 924-25 (9th Cir. 1986)
- Aldabe v. Aldabe, 616 F.2d 1089, 1092 (9th Cir. 1980)
- Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986)
- TeleVideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917-18 (9th Cir. 1987) (per curiam)
- Geddes v. United Fin. Group, 559 F.2d 557, 560 (9th Cir. 1977) (per curiam)
- Fair Housing of Marin v. Combs, 285 F.3d 899, 906 (9th Cir. 2002)
- Cripps v. Life Ins. Co. of N. Am., 980 F.2d 1261, 1267 (9th Cir. 1992)
- DIRECTV, Inc. v. Huynh, 503 F.3d 847, 854 (9th Cir. 2007)
- Abney v. Alameida, 334 F. Supp. 2d 1221, 1235 (S.D. Cal. 2004)
- Landstar Ranger, Inc. v. Parth Enterprises, Inc., 725 F. Supp. 2d 916, 920-23 (C.D. Cal. 2010)
- Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th Cir. 2006)
- Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006)
- Estelle v. Gamble, 429 U.S. 97, 106 (1976)
- Farmer v. Brennan, 511 U.S. 825, 828 (1994)
- Tate v. Troutman, 683 F. Supp. 2d 897, 909 (E.D. Wis.), aff'd sub nom. Tate v. Riegert, 380 F. App'x 550 (7th Cir. 2010)
- Epson Am., Inc. v. Sunvalleytek Int'l, Inc., 2024 WL 2104600, at *5, *7 (C.D. Cal. Apr. 22, 2024)
- Stratcomms LLC v. Republic of Mali, 2024 WL 1701943, at *4 (D. Nev. Apr. 18, 2024)
- Lal v. Felker, 2012 WL 3704917, at *3 (E.D. Cal. Aug. 24, 2012)
- Messner v. Glob. Reality Dev. Corp., 2010 WL 11519320, at *5 (C.D. Cal. Oct. 18, 2010)
- Truong Giang Corp. v. Twinstar Tea Corp., 2007 WL 1545173, at *12 (N.D. Cal. May 29, 2007)
- Krebs v. Passaic County, 2010 WL 2471817 (N.J. Super. Ct.)
- Anderson v. Kelso, 2017 WL 1079875, at *1-2 (E.D. Cal. Mar. 22, 2017)
- Vogel v. Rite Aid Corp., 992 F. Supp. 2d 998, 1013 (C.D. Cal.)
- United States v. Ortiz, 956 F.2d 1168 (9th Cir. 1992)

- Eldridge v. Block, 832 F.2d 1132, 1136 (9th Cir. 1987)
- Reyes v. Modesto, 2012 WL 259990, at *1 (E.D. Cal. Jan. 27, 2012)
- Liberty Ins. Underwriters Inc. v. Scudier, 53 F. Supp. 3d 1308, 1318 (D. Nev. 2015)
- Bury v. Bradish, 2009 WL 414489, at *1 (E.D. Cal. Feb. 18, 2009), aff'd, 369 F. App'x 858 (9th Cir. 2010)
- Watson v. City of San Jose, 800 F.3d 1135, 1140 (9th Cir. 2015)
- Smith v. Wade, 461 U.S. 30, 34 (1983)
- Carey v. Piphus, 435 U.S. 247 (1978)
- Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998)
- Martinez v. Yist, 951 F.2d 1153 (9th Cir. 1991)

OPINION

(PC) Coston v. Nangalama

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10

11 DANIEL MURPHY COSTON, No. 2:10-cv-02009-DC-EFB (PC)

12 Plaintiff,

13 v. FINDINGS AND RECOMMENDATIONS ON

14 PLAINTIFF'S MOTION FOR ENTRY OF

15 ANDREW NANGALAMA, et al., DEFAULT JUDGMENT (ECF No. 319)

16 Defendants. 16

17 This action arises from plaintiff's complaint under 42 U.S.C. § 1983 alleging the 18 defendants
 were deliberately indifferent to his serious medical needs while he was incarcerated at 19
 California State Prison - Sacramento. On May 30, 2024, the clerk entered judgment against 20
 defendant Randall Hale. ECF No. 285. Pending before the court is plaintiff's motion for entry of
 21 default judgment against defendant Hale for \$100,000 in compensatory damages and \$20,000
 in 22 punitive damages, plus attorney's fees and costs and post-judgment interest. For the reasons
 23 stated herein, the undersigned recommends the motion be denied.

24 RELEVANT PROCEDURAL HISTORY

25 Plaintiff commenced this action in 2010 against defendant Hale and others, alleging that 26
 they acted with deliberate indifference when discontinuing morphine that he had been prescribed
 27 as part of treatment for a chronic condition. ECF No. 1. Defendant Hale, identified to be a 28
 vocational nurse involved in plaintiff's care during the events at issue, filed an Answer in 2011, 1
 ECF No. 34, and a motion for summary judgment in 2012. ECF No. 56. Summary judgment was 2
 denied, ECF No. 73, and, in 2015, a trial was held, in which defendant Hale participated. ECF
 3 Nos. 134, 141. At the conclusion of evidence, the court granted defendants Hale's and

4 Nangalama's motion for judgment as a matter of law under Federal Rule of Civil Procedure 50.
5 ECF Nos. 141, 143. 6 Plaintiff appealed, ECF No. 147, and the Ninth Circuit vacated the district
court's 7 judgment and remanded the matter, in 2016. ECF No. 157. A retrial was held in 2018, in
which 8 defendant Hale again participated. ECF Nos. 179, 180, 187, 188. The jury returned a
verdict for 9 the defendants, ECF No. 188, and plaintiff appealed. ECF No. 209. In October 2021,
the Ninth 10 Circuit vacated and reversed the judgment and remanded the matter once again. ECF
No. 216. 11 After remand, defendant Hale again participated in some of the proceedings in the
district court. 12 ECF Nos. 222, 225. 13 In November 2022, counsel for defendant Hale moved to
withdraw on the basis of a 14 newly-arisen conflict and represented that she was unable to locate
Hale to serve the request on 15 him. ECF Nos. 227, 229. The court granted the motion and
directed defendant Hale to file a 16 status report, within thirty days, indicating whether he had
acquired new counsel or intended to 17 represent himself. ECF No. 232. Since then, defendant
Hale has not filed the status report nor 18 has he otherwise appeared in this proceeding, and
documents attempted to be served on him have 19 been returned as undeliverable. 20 In April
2024, plaintiff moved to strike defendant Hale's Answer and for default to be 21 entered against
him. ECF No. 276. The court granted the motion, ECF No. 284, and default was 22 entered against
defendant Hale on May 30, 2024. ECF No. 285.

23 LEGAL STANDARD

24 Pursuant to Federal Rule of Civil Procedure 55, default may be entered against a party 25
against whom a judgment for affirmative relief is sought who fails to plead or otherwise defend 26
against the action. See Fed. R. Civ. P. 55(a). "A defendant's default," however, "does not 27
automatically entitle the plaintiff to a court-ordered judgment." *PepsiCo, Inc. v. Cal. Sec. Cans*, 28
238 F.Supp.2d 1172, 1174 (C.D. Cal. 2002) (citing *Draper v. Coombs*, 792 F.2d 915, 924-25 (9th
1 Cir. 1986)); see Fed. R. Civ. P. 55(b) (governing the entry of default judgments). Instead, the
2 decision to grant or deny an application for default judgment lies within the district court's sound
3 discretion. *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). In making this determination,
4 the court should consider the following factors: 5

(1) the possibility of prejudice to the plaintiff; (2) the merits of plaintiff's
6 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) 7 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. 8 *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986).
Default judgments are ordinarily disfavored. *Id.* at 1472. 9 10 As a general rule, once default is
entered, well-pleaded factual allegations in the operative 11 complaint are taken as true, except for
those allegations relating to damages. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18
(9th Cir. 1987) (per curiam) (citing *Geddes v. United Fin. 13 Group*, 559 F.2d 557, 560 (9th Cir.
1977) (per curiam)); see also *Fair Housing of Marin v. 14 Combs*, 285 F.3d 899, 906 (9th Cir.
2002). Although well-pleaded allegations in the complaint 15 are admitted by a defendant's failure

to respond, “necessary facts not contained in the pleadings, 16 and claims which are legally insufficient, are not established by default.” *Cripps v. Life Ins. Co.* 17 of N. Am., 980 F.2d 1261, 1267 (9th Cir. 1992) (citing *Danning v. Lavine*, 572 F.2d 1386, 1388 18 (9th Cir. 1978)); accord *DIRECTV, Inc. v. Huynh*, 503 F.3d 847, 854 (9th Cir. 2007) (“[A] 19 defendant is not held to admit facts that are not well-pleaded or to admit conclusions of law”) 20 (citation and quotation marks omitted); *Abney v. Alameida*, 334 F.Supp.2d 1221, 1235 (S.D. Cal. 21 2004) (“[A] default judgment may not be entered on a legally insufficient claim.”). A party’s 22 default conclusively establishes that party’s liability, although it does not establish the amount of 23 damages. *Geddes*, 559 F.2d at 560; cf. *Adriana Int’l Corp. v. Thoeren*, 913 F.2d 1406, 1414 (9th 24 Cir. 1990) (stating in the context of a default entered pursuant to Federal Rule of Civil Procedure

25 37 that the default conclusively established the liability of the defaulting party). 26 /// 27 /// 28
1 DISCUSSION

2 Plaintiff has complied with the procedural requirements for entry of default judgment, in 3 that default has been entered against defendant Hale and the judgment requested corresponds to 4 that asserted in plaintiff’s Complaint. See Fed. R. Civ. P. 54(c), 55. The court accordingly turns 5 to the factors set forth in *Eitel*, 782 F.2d at 1471-72, which guide this court’s exercise of 6 discretion on the issue. 7 A. Consideration of Eitel Factors 8 1. Possibility of Prejudice to Plaintiff 9 The first Eitel factor favors the entry of default judgment, as it requires the court to 10 consider the possibility of prejudice to the plaintiff if a default judgment is not entered. *Eitel*, 782 11 F.2d at 1471. Prejudice exists where failure to enter a default judgment would leave plaintiff 12 without a proper remedy. *Landstar Ranger, Inc. v. Parth Enterprises, Inc.*, 725 F. Supp.2d 916, 13 920 (C.D. Cal. 2010). Here, because defendant Hale has ceased defending this action, if default 14 judgment is not entered, plaintiff would be left without a monetary remedy against him, thus 15 weighing in favor of entry of default judgment. See *PepsiCo, Inc.*, 238 F. Supp. 2d at 1177. 16 2. Merits of Plaintiff’s Underlying Claim and Sufficiency of the Complaint 17 The second Eitel factor requires the court to consider whether the plaintiff has pled a 18 facially meritorious cause of action against the defendant. *Eitel*, 782 F.2d at 1471; *Landstar 19 Ranger, Inc.*, 725 F.Supp.2d at 920; *PepsiCo, Inc.*, 238 F.Supp.2d at 1177. Here, these factors 20 also weigh in favor of entry of default judgment. 21 The Eighth Amendment of the Constitution prohibits inhumane methods of punishment 22 and conditions of confinement. *Morgan v. Morgensen*, 465 F.3d 1041, 1045 (9th Cir. 2006). To 23 succeed on an Eighth Amendment claim predicated on the denial of medical care, a plaintiff must 24 establish that he had a serious medical need and that the defendant’s response to that need was 25 deliberately indifferent. *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006); see also *Estelle v. 26 Gamble*, 429 U.S. 97, 106 (1976). A serious medical need exists if the failure to treat plaintiff’s 27 condition could result in further significant injury or the unnecessary and wanton infliction of 28 pain. *Jett*, 439 F.3d at 1096. An officer has been deliberately indifferent if he was (a) 1 subjectively aware of the serious medical need and (b) failed to

adequately respond. *Farmer v. Brennan*, 511 U.S. 825, 828 (1994).³ Here, plaintiff's complaint adequately set forth a claim of deliberate indifference to his⁴ serious medical needs against defendant Hale. Per his allegations, defendant Hale intentionally,⁵ abruptly stopped provision of plaintiff's prescribed morphine and ignored plaintiff's complaints⁶ of resulting pain. ECF No. 1 ¶¶ 22-25. Plaintiff further pled that, as a result of defendant Hale's⁷ actions, he experienced serious medical consequences, including additional pain and withdrawal⁸ symptoms. ECF No. 1 ¶ 25. These allegations, if credited by a factfinder, suffice to make a⁹ showing of defendant Hale's deliberate indifference to plaintiff's serious medical needs in¹⁰ violation of the latter's Eighth Amendment rights. See *Jett*, 439 F.3d at 1096; cf. ECF No. 67 at 11 8-15 (recommending denial of defendant Hale's motion for summary judgment); ECF No. 73¹² (adopting same). Thus, the second and third Eitel factors weigh in favor of entry of default¹³ judgment.¹⁴

3. Sum of Money at Stake¹⁵

The fourth Eitel factor examines whether a sum of money at stake is proportionate to the¹⁶ harm defendant is responsible for causing plaintiff. *Eitel*, 782 F.2d at 1471; *Landstar Rager, Inc.*,¹⁷ 725 F. Supp. 2d at 921; *PepsiCo, Inc.*, 238 F. Supp. 2d at 1176. Courts have found this factor¹⁸ weighs against entry of default judgment where the amount of damages requested appears¹⁹ speculative. See, e.g., *Epson Am., Inc. v. Sunvalleytek Int'l, Inc.*, No. 823CV00735JVSADS, 2024 WL 2104600, at *5 (C.D. Cal. Apr. 22, 2024); *Stratcomms LLC v. Republic of Mali*, No. 21 222CV01093MMDEJY, 2024 WL 1701943, at *4 (D. Nev. Apr. 18, 2024); *Lal v. Felker*, No. 22 2:07-CV-02060 KJM, 2012 WL 3704917, at *3 (E.D. Cal. Aug. 24, 2012), report and²³ recommendation adopted, No. CIV S-07-2060 KJM, 2012 WL 4490959 (E.D. Cal. Sept. 28, 24 2012); *Messner v. Glob. Reality Dev. Corp.*, No. CV0806001SJOMANX, 2010 WL 11519320, at 25 *5 (C.D. Cal. Oct. 18, 2010); *Truong Giang Corp. v. Twinstar Tea Corp.*, No. C 06-03594 JSW, 26 2007 WL 1545173, at *12 (N.D. Cal. May 29, 2007). Here, the speculative nature of the²⁷ requested damages weighs against entry of default judgment against defendant Hale.²⁸

1 Plaintiff relies on two items to justify his request for a judgment of \$100,000 in² compensatory damages. First, he cites to a 2010 settlement in Superior Court of New Jersey,³ Passaic County Division, where, reportedly, plaintiff had been a county jail inmate who sued the⁴ county and his treating doctor for medical malpractice and deliberate indifference, in violation of⁵ his civil rights. ECF No. 319 at 9 (citing *Krebs v. Passaic County*, 2010 WL 2471817 (N.J. 6 Super. Ct.) (Verdict and Settlement Summary)). The evidence in support of plaintiff's claims⁷ included that he had complained of severe pain and requested to visit the jail infirmary⁴⁵ times,⁸ but was never diagnosed nor treated for a serious medical condition. *Ibid.* Reportedly, during⁹ trial, plaintiff settled the matter against both defendants for \$100,000 in total. *Ibid.*

10 The second item on which plaintiff bases his request for compensatory damages is¹¹ *Anderson v. Kelso*, No. 2:12-cv-00261-MCE-KJN, 2017 WL 1079875 (E.D. Cal. Mar. 22, 2017).¹² ECF No. 319 at 9-10. In that case, plaintiff was incarcerated in a California state prison and¹³ brought a suit under⁴² U.S.C. § 1983 against, inter alia, a physician at and the medical director¹⁴ of the prison, based on their involvement in the decision to discontinue his pain medication.¹⁵ *Anderson*, 2017 WL

1079875, at *1. At trial, the plaintiff presented evidence that the reasons for 16 discontinuing the medication and the manner in which it was discontinued were unreasonable 17 under professional norms, as well as evidence of the ways the resultant pain had impacted his life. 18 Id. at *2. The jury found that the medical director and physician, both of whom had been 19 members of the panel that had decided to discontinue plaintiff's pain medication, had been 20 deliberately indifferent to the plaintiff's medical needs and awarded plaintiff \$60,000 in damages 21 from each of the two defendants. Ibid. 22 These items fail to demonstrate that the request for \$100,000 in compensatory damages 23 from defendant Hale is non-speculative, nor that it is proportionate to the harm for which he is 24 legally responsible. As a preliminary matter, the undersigned is unpersuaded that the first case 25 cited by plaintiff, which arose in New Jersey Superior Court in 2010, is significantly probative of 26 the likely jury verdict that may be returned in this vicinage, many years later. Cf. Tate v. 27 Troutman, 683 F. Supp. 2d 897, 909 (E.D. Wis.), aff'd sub nom. Tate v. Riegert, 380 F. App'x 28 550 (7th Cir. 2010) (to determine whether plaintiff's requested compensatory damages were 1 reasonable in his civil rights action, court surveyed numerous jury awards in civil rights cases in 2 the circuit). Moreover, neither Krebs nor Anderson, alone or taken together, appear to justify the 3 damages plaintiff requests against defendant Hale here. First, neither case supports the 4 reasonableness of an award of this amount against a single defendant for a single cause of action 5 of deliberate indifference. Second, in both cases plaintiff cites, the defendants at issue were the 6 plaintiff's treating physicians or otherwise proven to be directly responsible for the plaintiff 7 having received substandard care or having had his medication discontinued. Here, in contrast, 8 even taking plaintiff's allegations against defendant Hale as true, defendant Hale's personal 9 responsibility for the harms suffered by plaintiff appears more attenuated. See ECF No. 1 ¶¶ 22- 10 25. Taken as a whole, plaintiff offers no justification or explanation as to how this proposed 11 amount was arrived at, nor why it is proportionally tailored to defendant Hale specifically. As 12 such, the undersigned finds the fourth Eitel factor weighs against entry of default judgment 13 against defendant Hale. See Lal, 2012 WL 3704917, at *3 (fact that plaintiff requested damages 14 of \$200,000 against defendant in claim of deliberate indifference, but presented no evidence to 15 substantiate that figure, weighed against the entry of default). 16 4. Possibility of Dispute Over Material Facts 17 The fifth Eitel factor considers the possibility that material facts may be in dispute. 18 Landstar Ranger, Inc., 725 F. Supp. 2d at 921; Pepsico, 238 F.Supp.2d at 1177; see also Eitel, 19 782 F.2d at 1471-72. Where a plaintiff has filed a well-pleaded complaint, the possibility of 20 dispute concerning material facts is unlikely. Landstar Ranger, 725 F. Supp.2d at 921-22. Here, 21 since defendant Hale is in default and his Answer was stricken, ECF No. 284, all of plaintiff's 22 well-pleaded factual allegations are taken as true. TeleVideo Sys., Inc., 826 F.2d at 918; Fed. R. 23 Civ. Proc. 8(b)(6). Accordingly, no factual dispute exists that would preclude the entry of default 24 judgment, Vogel v. Rite Aid Corp., 992 F. Supp.2d, 998, 1013 (C.D. Cal 2014), and this factor 25 weighs in favor of entry of default judgment. 26 5. Whether the Default Was Due to Excusable Neglect 27 With the sixth Eitel

factor, the court considers whether the defendant's default may have been the product of excusable neglect. *Landstar Ranger, Inc.*, 725 F. Supp. 2d at 922; *Pepsico*, 1 238 F.Supp.2d at 1177; see *Eitel*, 782 F.2d at 1471-72. Here, defendant Hale participated in these 2 proceedings for many years prior to his default, as described ante. When his counsel moved to 3 withdraw, in 2022, she described that a conflict had arisen because the California Department of 4 Justice had moved to revoke defendant Hale's professional license apparently due to arrests and 5 convictions he suffered in 2020 and 2021, which counsel also detailed. ECF No. 229 at 2-3. 6 Counsel further represented that there were active warrants for defendant Hale's arrest. *Id.* at 4. 7 The court granted the motion of the basis of these representations. ECF No. 232. 8 Courts have recognized that a litigant's incarceration may present practical impediments 9 to his preparation of pleadings and communication with the courts, and thereby sometimes 10 constitutes "excusable neglect" for non-adherence to deadlines and other procedural 11 requirements. See, e.g., *United States v. Ortiz*, 956 F.2d 1168 (9th Cir. 1992); *Eldridge v. Block*, 12 832 F.2d 1132, 1136 (9th Cir. 1987); *Reyes v. Modesto*, No. 2:09-CV-03114 KJM, 2012 WL 13 259990, at *1 (E.D. Cal. Jan. 27, 2012), report and recommendation adopted, No. CIV-S-09- 14 3114-KJM, 2012 WL 1038535 (E.D. Cal. Mar. 27, 2012); but see *Liberty Ins. Underwriters Inc. 15 v. Scudier*, 53 F. Supp. 3d 1308, 1318 (D. Nev. 2013) (finding no excusable neglect where 16 defendant was properly served, despite his being incarcerated). Here, there is nothing in the 17 record to show whether defendant Hale is incarcerated, let alone that would present a possible 18 excuse for his neglect in participating in this suit. Given, however, that the record suggests the 19 possibility of his present incarceration, and given that, if true, that fact could provide a factual 20 explanation for defendant Hale's recent failure to participate in these proceedings, this factor 21 militates against entry of default judgment against him at this juncture. 22 6. Policy of Deciding Cases on Their Merits 23 *Eitel* finally requires the court to consider, as a stand-alone factor, "the strong policy 24 underlying the Federal Rules of Civil Procedure favoring decisions on the merits." *Eitel*, 782 25 F.2d at 1472. This factor, therefore, weighs against entry of default judgment, although plainly is 26 not dispositive. See *ibid.* 27 //// 28 //// 1 7. Conclusion 2 Taken together, the *Eitel* factors are mixed. Although the plaintiff's complaint states a 3 cause of action against defendant Hale, the material facts of which are not in dispute given the 4 striking of his Answer, and although plaintiff would be without a monetary remedy absent entry 5 of judgment, the damages plaintiff seeks appear largely speculative and unsupported, and plaintiff 6 has not shown they are proportionate to the harm caused by defendant Hale. As such, this factor 7 favors requiring plaintiff to present evidence establishing some measure of damages. Moreover, 8 the record suggests a possible factual reason for defendant Hale's abrupt departure from the 9 proceedings, after many years of his apparently active participation, which implies further fact- 10 finding may be necessary before the court can conclude his default arose from inexcusable 11 neglect. These concerns carry particular weight in light of the "general rule that default 12 judgments are ordinarily disfavored." *Eitel*, 782 F.2d at 1472. Dispositive, however, is the 13 speculative nature of the damages sought, as described

below. 14 B. Relief Sought 15 Regardless of how the Eitel factors militate, a court may only award damages that have 16 been actually proven by the plaintiff. *Geddes*, 559 F.2d at 560; see also *TeleVideo Sys., Inc.*, 826 F.2d at 917-18; *Landstar Ranger, Inc.*, 725 F. Supp. 2d at 923; *Bd. of Trs. of the Boilermaker 18 Vacation Tr. v. Skelly, Inc.*, 389 F. Supp. 2d 1222, 1226 (N.D. Cal. 2005). Thus, where plaintiff 19 has requested a particular monetary award without evidentiary support substantiating its 20 appropriateness, courts routinely decline to enter the requested default judgment. See, e.g., *Epson 21 Am., Inc.*, 2024 WL 2104600, at *7; *Lal*, 2012 WL 3704917, at *3; *Bury v. Bradish*, No. 22 1:05CV00600LJOGSAPC, 2009 WL 414489, at *1 (E.D. Cal. Feb. 18, 2009), *aff'd*, 369 F. App'x 23 858 (9th Cir. 2010). A plaintiff seeking compensatory damages for a violation of his rights under 24 § 1983 must prove by a preponderance of the evidence that the amount of money requested will 25 fairly and reasonably compensate him for the harm caused by the defendant. See *Watson v. City 26 of San Jose*, 800 F.3d 1135, 1140 (9th Cir. 2015); see generally *Smith v. Wade*, 461 U.S. 30, 34 27 (1983); *Carey v. Phipus*, 435 U.S. 247 (1978); Ninth Cir. Mod. Civ. Jury Instructions 5.1. Here, 28 plaintiff has failed to show that the compensatory damages he requests are not speculative and 1 | that they fairly and reasonably compensate him for the harm caused by defendant Hale in 2 || particular. Accordingly, the undersigned recommends that the court deny plaintiff's motion for 3 | entry of default judgment against defendant Hale without prejudice to its renewal, supported by 4 | argument and any evidence plaintiff may choose to offer, concerning the Eite/ factors and 5 | plaintiff's claimed damages.

6 CONCLUSION

7 Accordingly, IT IS HEREBY RECOMMENDED THAT plaintiff's Motion for Entry of 8 | Default Judgment (ECF No. 319) be DENIED WITHOUT PREJUDICE. 9 These findings and recommendations are submitted to the United States District Judge 10 || assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days 11 | after being served with these findings and recommendations, any party may file written 12 || objections with the court and serve a copy on all parties. Such a document should be captioned 13 || "Objections to Magistrate Judge's Findings and Recommendations." Any response to the 14 || objections shall be served and filed within fourteen days after service of the objections. The 15 || parties are advised that failure to file objections within the specified time may waive the right to 16 || appeal the District Court's order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez 17 | v. Yist*, 951 F.2d 1153 (9th Cir. 1991). 18 19 | Dated: June 13, 2025 _Slbittiel PEMA

EDMUND F. BRENNAN

20 UNITED STATES MAGISTRATE JUDGE

21 22 23 24 25 26 27 28 10