UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

NATHEN W. BARTON, Plaintiff, v. REAL INNOVATION INC. et al., Defendant.	CASE NO. 3:24-cv-05194-DGE ORDER GRANTING DEFAULT JUDGMENT (DKT. NO. 91)

Before the Court is Plaintiff's motion for default judgment (Dkt. No. 91) against Defendant Deryck D. Richardson. For the reasons addressed, the Court GRANTS Plaintiff's motion for default judgment.

I BACKGROUND

Plaintiff initiated this action in Clark County Superior Court, and it was removed to this Court. (*See* Dkt. No. 1.) Plaintiff brought suit against Defendants Real Innovation, Inc. ("RI") and its founder Peter Reierson, as well as Richardson Marketing Group, LLC and its owner Richardson, alleging that Defendants violated the Telephone Consumer Protection Act

("TCPA"), 47 U.S.C. § 227, and its implementing regulations, along with state law. (Dkt. No. 1-1 at 6, 39–44.)

RI responded to the lawsuit with an answer and crossclaims against RMG. (Dkt. No. 12.) Richardson accepted service on behalf of RMG. (*See* Dkt. No. 31.) Because RMG did not file an answer to the complaint, Plaintiff moved to hold RMG in default. (Dkt. No. 34.) Richardson, appearing *pro se*, then filed an answer purportedly on behalf of himself and RMG, denying the claims and crossclaims. (Dkt. No. 41.) This Court (Bryan, J.) held that Richardson could not answer on behalf of RMG, because Local Rule 83.2(b)(4) states that "[a] business entity, except a sole proprietorship, must be represented by counsel." (Dkt. No. 45 at 3.) The Court deferred ruling on Plaintiff's motion for default, affording RMG an opportunity to retain counsel and answer the complaint by September 17, 2024. (*Id.* at 4.) That deadline came and went without any action by RMG. The Court then granted Plaintiff's motion and ordered the Clerk to enter default against RMG, and the Clerk did so on September 19, 2024. (Dkt. Nos. 47, 48.) The Court subsequently granted Plaintiff's motion for default judgment against RMG. (Dkt. No. 70.)

Meanwhile, Plaintiff's claims against RI and Reierson were dismissed with prejudice on April 30, 2025. (Dkt. No. 63.) As for RI's crossclaims against RMG, RI was granted default judgment against RMG on June 24, 2025. (Dkt. No. 69.)

Thus, the only claims remaining in this litigation were Plaintiff's claims against Richardson.

Per the Court's scheduling order dated June 26, 2024, this matter was scheduled for trial on October 6, 2025, with a pretrial hearing scheduled for September 26, 2025. (Dkt. No. 28.) The scheduling order also contained other pretrial dates by which the Parties were to exchange motions in limine, proposed trial jury instructions, designate deposition excerpts, and prepare

and file a joint proposed pretrial order. (*Id.*) On August 14, 2025, the Court reminded the parties that trial remained scheduled for October 6, 2025 and that they were required to diligently prepare for trial. (Dkt. No. 72.) Plaintiff filed numerous pretrial documents in preparation for trial without any input from Richardson. (Dkt. Nos. 80–83.) Thereafter, the Court scheduled a status hearing on September 19, 2025 to discuss the status of trial preparation. (Dkt. No. 84.) Richardson did not appear at the hearing and Plaintiff represented that Richardson failed to participate in preparing pretrial submissions. Based on Richardson's lack of involvement in this litigation and his failure to prosecute any defense, the Court found Richardson in default and ordered Plaintiff to file for default judgment. (*Id.*)

Plaintiff has now moved for default judgment against Richardson. (Dkt. No. 91). Although Richardson continues to receive notices in this case (*see* Dkt. Nos. 37, 38) and is thus presumably aware of the motion for default judgment against him, there has been no movement by Richardson to set aside this default or otherwise participate in this litigation.

Plaintiff seeks judgment on violations of: 47 U.S.C. § 227(b); 47 U.S.C. § 227(c); Washington Revised Code § 80.36.390(6) (before July 23, 2023) and Washington Revised Code § 80.36.390(7) (on or after July 23, 2023); Washington Revised Code § 80.36.390(9) (on or after July 23, 2023); and Washington Revised Code § 80.36.400. (Dkt. No. 91 at 9.)

II JURISDICTION

The Court has federal question jurisdiction over Plaintiff's TCPA claims. *See* 28 U.S.C. § 1331; *Mims v. Arrow Fin. Servs., LLC*, 565 U.S. 368, 376 (2012) (holding that TCPA's grant of jurisdiction to state courts is concurrent with federal-question jurisdiction, not exclusive). The Court has supplemental jurisdiction over his state law claims. 28 U.S.C. § 1367. Richardson filed a responsive pleading and did not raise personal jurisdiction as a defense, thereby waiving

his right to raise personal jurisdiction later. *See* Fed. R. Civ. P. 12(h); *Parker v. United States*, 110 F.3d 678, 682 (9th Cir. 1997). Thus, the Court has personal jurisdiction over Richardson.

III DISCUSSION

In the Ninth Circuit, entry of default judgment is governed by *Eitel v. McCool*, 782 F.2d 1470 (9th Cir. 1986). *Eitel* requires the Court to consider the following factors:

> (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.

Id. at 1471–1472. All the *Eitel* factors do not need to weigh in Plaintiff's favor for the Court to grant default judgment. *See id.* at 1472. "[U]pon default the factual allegations of the complaint, except those relating to the amount of damages, will be taken as true." *Geddes v. United Fin. Grp.*, 559 F.2d 557, 560 (9th Cir. 1977) (citation omitted). "[N]ecessary facts not contained in the pleadings, and claims which are legally insufficient, are not established by default." *Cripps v. Life Ins. Co. of N. Am.*, 980 F.2d 1261, 1267 (9th Cir. 1992).

Factor 1: Possibility of Prejudice to the Plaintiff

Plaintiff will be prejudiced absent entry of default judgment. "On a motion for default judgment, 'prejudice' exists where the plaintiff has no 'recourse for recovery' other than default judgment." *Curtis v. Illumination Arts, Inc.*, 33 F. Supp. 3d 1200, 1211 (W.D. Wash. 2014) (quoting *Philip Morris USA, Inc. v. Castworld Prods., Inc.*, 219 F.R.D. 494, 499 (C.D. Cal. 2003)). Here, Plaintiff initiated this action in March 2024, over a year ago (*see* Dkt. No. 1), Richardson filed an answer in July 2024 (Dkt. No. 41), and still there has been no substantive movement on Plaintiff's litigation against Richardson because of the latter's failure to participate. Absent default, Plaintiff will have no way to recover against Richardson.

Factors 2 and 3: Merits of Plaintiff's Claims and Sufficiency of Complaint

The second and third factors are frequently analyzed together. *Curtis*, 33 F. Supp. 3d at 1211. The Court will analyze Plaintiff's claims on a claim-by-claim basis, determining whether he has made out a prima facie case as to each.

Federal Claims

1. 47 U.S.C. § 227(b)

Under § 227(b)(1)(A), it is unlawful "to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system ["ATDS"] or an artificial or prerecorded voice," under certain conditions, such as when the call is made to a "cellular telephone service." Because it is framed in the disjunctive, "there are two ways to violate this provision: using an ATDS or an 'artificial or prerecorded voice.'" *Trim v. Reward Zone USA LLC*, 76 F.4th 1157, 1160 (9th Cir. 2023). At least as to a claim regarding use of an ATDS, the elements of the claim are: "(1) the defendant called a cellular telephone number; (2) using an [ATDS]; (3) without the recipient's prior express consent." *Meyer v. Portfolio Recovery Assocs., LLC*, 707 F.3d 1036, 1043 (9th Cir. 2012). ATDS is defined in the statute as "equipment that has the capacity—(A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers." 47 U.S.C. § 227(a)(1). Express consent means "[c]onsent that is clearly and unmistakably stated." *Satterfield v. Simon & Schuster, Inc.,* 569 F.3d 946, 955 (9th Cir. 2009) (quoting BLACK'S LAW DICTIONARY 323 (8th ed. 2004)). Moreover, "providing a phone number in itself [does not mean] that the consumer has expressly consented to contact for any purpose whatsoever." *Chennette v. Porch.com, Inc.*, 50 F.4th 1217, 1221 (9th Cir. 2022) (quoting *Van Patten v. Vertical Fitness Grp., LLC*, 847 F.3d 1037, 10145–1046 (9th Cir. 2017)).

Plaintiff alleges that Richardson is personally liable for the TCPA violations. As a general rule of agency law, the personal liability of a corporate director or officer must be "founded upon specific acts by the individual director or officer." *United States v. Reis*, 366 Fed. Appx. 781, 782 (9th Cir. 2010). Although the Ninth Circuit has not ruled on this issue, numerous district courts have held that individual officers of an entity violating the TCPA can be personally liable if they "had direct, personal participation in or personally authorized the conduct found to have violated the statute." *Rinky Dink, Inc. v. Elec. Merch. Sys., Inc.*, 2014 WL 12103245, at *6 (W.D. Wash. Nov. 4, 2014) (citations omitted); *see also Sandusky Wellness Center, LLC v. Wagner Wellness, Inc*., No. 3:12–CV–2257, 2014 WL 1333472, at *3 (N.D. Ohio Mar. 28, 2014); *Ott v. Mortg. Inv'rs Corp, of Ohio, Inc.*, 65 F. Supp. 3d 1046, 1060 (D. Or. 2014); *Jackson Five Star Catering, Inc. v. Beason*, No. 10–10010, 2013 WL 5966340, at *4 (E.D. Mich. Nov. 8, 2013) (personal participation in the payment for and authorization of fax ads is sufficient to render a corporate officer liable under the TCPA); *Versteeg v. Bennett, Deloney & Noyes, P.C.*, 775 F. Supp. 2d 1316, 1320–21 (D. Wyo. 2011); *Covington & Burling v. Int'l Mktg. & Research, Inc.*, No. CIV A 01–0004360, 2003 WL 21384825, at *6 (D.C. Super. April 17, 2003) (holding that corporate executives were personally liable because they "set company policies and [oversaw] day-to-day operations" and were "clearly involved in the business practices" that violated the TCPA); *Texas v. Am. Blastfax, Inc.*, 164 F. Supp. 2d 892, 898 (W.D. Tex. 2001). Where courts have declined to find personal liability, there has been little evidence of the corporate officer's direct participation in the wrongdoing. *See, e.g., Mais v. Gulf Coast Collection Bureau, Inc.*, No. 11–61936–CIV–SCOLA, 2013 WL 1283885 (S.D. Fla. Mar. 27, 2013).

The complaint alleges that Richardson, as owner and manager of RMG, (1) provided his call center with phone numbers to call and scripts to use in the calls, (2) "instructed his call center to ignore *do-not-call* requests," (3) knew that Plaintiff did not consent to the calls, and (4) told his call center to continue calling. (Dkt. No. 39 at 7, 32, 39.) Plaintiff also argues that the Requests for Admissions ("RFA") that Richardson did not respond to are deemed admitted and further prove Richardson's personal liability. (Dkt. No. 91 at 5.) "It is undisputed that failure to answer or object to a *proper* request for admission is itself an admission: the Rule itself so states." *Asea, Inc v. S. Pac. Trans. Co.*, 669 F.2d 1242, 1245 (9th Cir. 1981) (emphasis added); *Byard v. City & Cnty. Of San Francisco*, 2017 WL 988497, at *1 (N.D. Cal. Mar. 15, 2017) ("RFAs should 'not . . . be treated as substitutes for discovery processes to uncover evidence."). The *Byard* court explained the types of RFAs that were not proper:

> Many are argumentative and clearly not drafted to narrow the issues to be tried in this case, *See, e.g.*, RFA No. 183 ("Admit that the City has no legitimate reason for destroying the Patrol Special Program."); RFA No. 267 ("Admit that the City failed to establish a longstanding practice or custom to prevent the Patrol Specials force from being destroyed by attrition."). Others are vague and not drafted in a way to elicit a meaningful response from Defendants. *See, e.g.*, RFA No. 191 ("Admit that Patrol Special beats once had value."); RFA No. 197 ("Admit the City often made new interpretations of the rights and duties of the Patrol Specials between 2010 and 2017."); RFA No. 203 ("Admit that Patrol Specials' businesses need clear rules to realize their full value."). Other RFAs appear to ask for information beyond Defendants' knowledge, or beyond any conceivable relevant time period for the case. *See, e.g.*, RFA Nos. 270–71 ("Admit that presently there is no market for Patrol Specials' beats" and that "presently there are no ready, willing, and able buyers for Patrol Specials' beats."); RFA Nos. 109–110 ("Admit that Patrol Specials have for 160 years used assistant officers" and that "Patrol Specials for 160 years have relied on assistant officers.").

Byard, 2017 WL 988497, at *2.

Here, some of the RFAs seek to have Richardson admit that he knew Plaintiff "had never consented to calls at any telephone number from any of the entities RMG was soliciting for and

[he] instructed RMG to telephone solicit" Plaintiff's phone numbers anyway.[1] (Dkt. No. 91 at 5–6.) Others sought admission that Richardson knew Plaintiff had asked RMG to stop soliciting him at his phone numbers between 2019 and2023. (*Id.*) Finally, two RFAs requested admission that Richardson knew Plaintiff had "never consented to telephone calls from RMG that contained artificial and prerecorded voice, and [Richardson] instructed RMG to initiate calls" using an automatic dialing device anyway." (*Id.* at 7.)

RFA No. 38 asks Richardson to admit "that during the times relevant to this lawsuit you instructed RMG not to comply with 47 C.F.R. § 64.1200(d)(4)." Though this RFA appears to ask Richardson to apply law to fact, an RFA is not objectionable on that basis alone. *See* Fed. R. Civ. P. 36(a)(1) (Rule 36 authorizes a party to serve "a written request to admit . . . the truth of any matters within the scope of Rule 26(b)(1) relating to . . . (A) facts, the application of law to fact, or opinions about either."); *see also Watterson v. Garfield Beach*, CVS LLC, No. 14-cv-0721-HSG (DMR), 2015 WL 2156857, at *4 (N.D. Cal. May 7, 2015) (finding that RFA asking plaintiff to admit or deny whether the WellRewards programs are "wellness programs" as that term is defined under 26 C.F.R. § 54.9802–1(f)(1) was proper as an application of law to facts).

The Court concludes, unlike those mentioned in *Byard*, these RFAs are neither vague, nor argumentative, and appear to ask for information within Richardson's knowledge. Thus, the

[1] It is true that requests for admissions may not contain compound, conjunctive, or disjunctive (e.g., "and/or") statements. *See U.S. ex rel. Englund v. Los Angeles Cnty.*, 235 F.R.D. 675, 684 (E.D. Cal. 2006). However, the mere presence of "and/or" language does not end the inquiry. As explained in *Diederich v. Dep't of Army*, 132 F.R.D. 614, 619–21 (S.D.N.Y. 1990), the key inquiry is whether a facially "compound" RFA is nonetheless capable of being answered with a simple "yes" or "no." Compound requests that are "capable of separation into distinct components" should be denied or admitted with appropriate designation or qualification by defendant in its response. *Id.* at 621; *see also City of Colton v. Am. Promotional Events, Inc.*, No. ED CV 09-01864 PSG (SSx), 2012 WL 13013378, at *3 (C.D. Cal. Jan. 27, 2012) (ordering response to RFA containing "and/or" language to the best of the responding party's ability).

RFA Nos. 13–19, 22–27, and 38–39 are deemed admitted. Plaintiff sufficiently alleges that Richardson personally authorized the conduct found to have violated the statute. Therefore, the Court will find that Plaintiff has sufficiently pled 54 violations of § 227(b), for the artificial or pre-recorded voice calls.[2]

2. 47 U.S.C. § 227(c)

Subsection § 227(c) provides authority for regulations to create the Do Not Call Registry ("DNCR"), and § 227(c)(5) creates a private right of action for "[a] person who has received more than one telephone call within any 12-month period by or on behalf of the same entity in violation of the regulations prescribed under this subsection[.]" Plaintiff alleges Richardson violated those regulations, 47 C.F.R. § 64.1200, by calling his numbers that had been registered on the DNCR for "more than 31 days before all calls at issue in this Complaint." (Dkt. No. 39 at 8, 40.) Plaintiff does not identify what subsection of the regulation he is invoking, but this claim appears to implicate 47 C.F.R. § 64.1200(c)(2), which prohibits calls to residential numbers on the DNCR, and allows a defense that the caller relied on a previous version of the list, no more than 31 days old.[3] The complaint alleges the first call occurred on July 12, 2022, and Plaintiff's numbers were on the DNCR for more than 31 days before. (*Id.* at 8, 17.) Based on Richardson's admitted RFAs, Plaintiff alleges that Richardson instructed RMG to ignore Plaintiff's request to stop telephone soliciting his phone numbers, and Plaintiff's request had occurred in 2019 for his (972) number, and 2021 for is (469) number. (*See* Dkt. Nos. 87-4 at 9, 87-6 at 8.) Plaintiff's

[2] The Court previously concluded that Plaintiff alleged in his complaint that only 54 calls were made using artificial or pre-recorded voice that he did not consent to. (*See* Dkt. No. 70 at 8–9.)

[3] Plaintiff's complaint also alleged violations of 47 C.F.R §§ 64.1200(a)(7), (b), (c)(1), and (d)(4) (*see* Dkt. No. 39 at 40–42), but these allegations are not included within counts that Plaintiff chose to pursue in his motion for default judgment, so the Court does not reach those allegations.

claim appears to be facially valid and again, with Richardson failing to defend, there has been no evidence placed in the record to cast doubt on Plaintiff's assertions.

State Claims

1. Washington Revised Code §§ 80.36.390(6)/(7)

Under current § 80.36.390(7)(a) or former § 80.36.390(6)(a), "[i]f, at any time during the telephone contact, the called party states or indicates that he or she does not want to be called again by the telephone solicitor or wants to have his or her name, individual telephone number, or other contact information removed from the telephone lists used by the telephone solicitor" then the caller must "inform the called party that his or her contact information will be removed from the telephone solicitor's telephone lists for at least one year." Plaintiff alleges that for 25 of the 77 calls, he requested during the call to be placed on the telemarketer's do not call list or to be removed from their calling list, and he alleges that all 77 calls occurred within a year of one of these do not call requests. (Dkt. No. 39 at 17–19.) Richardson further admitted he knew Plaintiff had asked RMG to stop telephone soliciting his phone numbers and Richardson instructed RMG to ignore the request. (Dkt. Nos. 87-4 at 8–9, 87-6 at 7–8.)

In *Chesbro v. Best Buy Stores, L.P.,* the Ninth Circuit stated it had "no guidance from the Washington courts on how Washington interprets these provisions [Washington Revised Code §§ 80.36.400, .390]" and concluded that the text of the Washington Revised Code § 80.36.400 was "substantially similar to its federal counterpart, as is its purpose." 705 F.3d 913, 919 (9th Cir. 2012). In so concluding, the Ninth Circuit applied the same reasoning to the plaintiff's state

law claims—including Washington Revised Code § 80.36.390—as it did to the plaintiff's TCPA claims.[4] Therefore, Plaintiff's §§ 86.36.390(6)/(7) claim is sufficiently pled.

2. Washington Revised Code § 80.36.390(9)

Under this subsection, as of July 23, 2023, "[n]o person may initiate, or cause to be initiated, a telephone solicitation to a telephone number registered on the do not call registry maintained by the federal government pursuant to telephone consumer protection act, 47 U.S.C. Sec. 227 and related regulations, as currently enacted or subsequently amended." This claim tracks Plaintiff's claim under § 227(c) and 47 C.F.R § 64.1200(c) for calling him despite his number being listed on the DNCR. Therefore, for the same reasons described in the Court's analysis of Plaintiff's § 227(c) claim, this claim is adequately pled, as to calls occurring on or after July 23, 2023.

3. Washington Revised Code § 80.36.400

Under this section, "[n]o person may use an automatic dialing and announcing device for purposes of commercial solicitation." Wash. Rev. Code. § 80.36.400(2). The phrase "automatic dialing and announcing device" is defined as "a system which automatically dials telephone numbers and transmits a recorded or artificial voice message once a connection is made." Wash. Rev. Code. § 80.36.400(1)(b). Notably, this is a different definition than that used in the TCPA for ATDS and omits any reference to a "random or sequential number generator." *Compare* Wash. Rev. Code. § 80.36.400(1)(b) *with* 47 U.S.C. § 227(a)(1). The phrase "commercial

[4] Considering the absence of guidance from Washington courts, the Court acknowledges that this is a potentially novel conclusion that could be rejected in the future. The Court also does not have the benefit of oppositional briefing from Defendant and is in no position to hold differently. Thus, the Court follows *Chesbro*'s reasoning as to the relationship between the TCPA and Washington's telephone solicitation statutes, and notes that this analysis could be revisited in future cases.

solicitation" means "the unsolicited initiation of a telephone communication made for the purpose of encouraging a person to purchase property, goods, or services, or wrongfully obtaining anything of value." Wash. Rev. Code. § 80.36.400(1)(c). Compliance with the federal TCPA and its implementing regulations is an affirmative defense under the state law, as is "[i]mplement[ing] a reasonably effective plan to mitigate origination, initiation, or transmission of a commercial solicitation." Wash. Rev. Code. § 80.36.400(3).

Plaintiff alleges that "Defendants used an automatic dialing and announcing device to initiate all the robocalls described above to Plaintiff's phone numbers and then play artificial or prerecorded voice if and when the call was answered," and alleges that he did not consent to any call. (Dkt. No. 40 at 45–46.) Richardson further admitted he instructed RMG to initiate calls to Plaintiff's phone numbers using an automatic dialing and announcing device. (Dkt. No. 87-6 at 8.) The Court cannot know whether Defendant would have any evidence to support an affirmative defense, because it is not defending. The Court finds that Plaintiff has adequately alleged Richardson personally violated § 80.36.400(2) as to the 54 calls Plaintiff alleges were made with an artificial or pre-recorded voice.

Factor 4: The Sum of Money at Stake

The fourth *Eitel* factor "considers whether the amount of money requested is proportional to the harm caused." *Sun Life Assurance Co. of Canada v. Est. of Wheeler*, Case No. C19-0364-JLR, 2020 WL 433352, at *4 (W.D. Wash. Jan. 28, 2020). "If the sum of money at issue is reasonably proportionate to the harm caused by the defendant's actions, then default judgment is warranted." *Walters v. Statewide Concrete Barrier, Inc.*, Case No. C-04-2559 JSW MEJ, 2006 WL 2527776, at *4 (N.D. Cal. Aug. 30, 2006). "The Court considers Plaintiff's declarations, calculations, and other documentation of damages in determining if the amount at stake is

reasonable." *Marshall Wealth Mgmt. Grp., Inc. v. Santillo*, Case No. 18-CV-03510-LHK, 2019 WL 79036, at *7 (N.D. Cal. Jan. 2, 2019) (quoting *Trung Giang Corp. v. Twinstar Tea Corp.*, Case No. C 06–03594 JSW, 2007 WL 1545173, at *12 (N.D. Cal. May 29, 2007)).

This is a unique situation where each of the statutes upon which Plaintiff relies prescribes a mandatory minimum damages amount. In doing so, Congress and the Washington Legislature, respectively, made judgments about the harms of unwanted telemarketing calls to society and the appropriate measure of damages for those calls. The Court has no authority to deviate from those judgments. Therefore, the Court finds that the statutory damages are *per se* reasonable for purposes of the *Eitel* test. The Court will calculate the measure of damages in Section IV, *infra*.

Factor 5: The Possibility of a Dispute Concerning Material Facts

It is possible that there would be a dispute over material facts in this case, particularly Plaintiff's consent to calls or lack thereof, if Richardson were participating. Thus, this factor weights against default judgment.

Factor 6: Excusable Neglect

Richardson's failure to defend is not excusable. Richardson is aware of the litigation and filed an answered the complaint. *See* Section I, *supra*. Additionally, Richardson continues to receive notices in this case (*see* Dkt. Nos. 37, 38) and is thus presumably aware of the motion for default judgment against him yet has made no effort to explain his failure to defend. Therefore, this factor weighs in favor of default judgment.

Factor 7: The Preference for Resolving Disputes on the Merits

The final *Eitel* factor recognizes "the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits." *Eitel*, 782 F.2d at 1472. However, Richardson's failure to participate in this case makes disposition on the merits not possible. The seventh factor

weighs against default judgement, though this does not alter the result. *See PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F.Supp.2d 1172, 1177 (C.D. Cal. 2002) ("the mere existence of Fed. R. Civ. P. 55(b) indicates that 'this preference [for merits decisions], standing alone, is not dispositive.'").

Summary of *Eitel* Factors

On balance, the *Eitel* factors favor Plaintiff, and the Court will enter default judgment on Plaintiff's behalf.

IV DAMAGES

Next, the Court must calculate Plaintiff's measure of damages. At the outset, the Court will only calculate damages for the 77 calls that Plaintiff pleads with specificity, not the "at least 200 more documented calls not specifically listed in this Complaint." (Dkt. No. 39 at 19.) Without any information about those calls beyond the conclusory statement that they existed, the Court has insufficient basis to find that they violated the statute and award damages. The Court will first analyze damages for Plaintiff's TCPA claim, and then his state law claims.

TCPA Claims

As to damages under § 227(b), the statute provides as follows:

> **(3) Private right of action**
>
> A person or entity may, if otherwise permitted by the laws or rules of court of a State, bring in an appropriate court of that State—
>
> **(A)** an action based on a violation of this subsection or the regulations prescribed under this subsection to enjoin such violation,
> **(B)** an action to recover for actual monetary loss from such a violation, or to receive $500 in damages for each such violation, whichever is greater, or
> **(C)** both such actions.
>
> If the court finds that the defendant willfully or knowingly violated this subsection or the regulations prescribed under this subsection, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under subparagraph (B) of this paragraph.

47 U.S.C. § 227(b)(3). Further, there is a separate section in the statute covering damages for violations of regulations promulgated under § 227(c):

> **(5) Private right of action**
>
> A person who has received more than one telephone call within any 12-month period by or on behalf of the same entity in violation of the regulations prescribed under this subsection may, if otherwise permitted by the laws or rules of court of a State bring in an appropriate court of that State—
>
> **(A)** an action based on a violation of the regulations prescribed under this subsection to enjoin such violation,
>
> **(B)** an action to recover for actual monetary loss from such a violation, or to receive up to $500 in damages for each such violation, whichever is greater, or
>
> **(C)** both such actions.
>
> It shall be an affirmative defense in any action brought under this paragraph that the defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent telephone solicitations in violation of the regulations prescribed under this subsection. If the court finds that the defendant willfully or knowingly violated the regulations prescribed under this subsection, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under subparagraph (B) of this paragraph.

47 U.S.C. § 227(d)(5).

The Court finds that Plaintiff can recover separately for violations of both § 227(b) and § 227(c) in the same call. The text and structure of the statute and available authority all point to that result. The text states that Plaintiff is entitled to $500 for "each such *violation*," and relying on that, at least one appellate court has held that "because the plain language of the TCPA 'allows a person to recover $500 in damages for each . . . violation of this subsection,' a plaintiff can recover separate penalties under separate sections of the TCPA even if the violations occurred in the same telephone call." *Mey v. Phillips*, 71 F.4th 203, 225 (4th Cir. 2023) (quoting *Lary v. Trinity Physician Fin. & Ins. Servs.*, 780 F.3d 1101, 1106 (11th Cir. 2015)). Further, the

fact that each of § 227(b) and § 227(c) have their own damages provisions strongly indicate that they should be calculated separately.

Therefore, as to violations of § 227(b), the Court will award the statutory minimum $500 per violation. "If the court finds that the defendant willfully or knowingly violated this subsection or the regulations prescribed under this subsection, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under subparagraph (B) of this paragraph." 47 U.S.C. § 227(b)(3)(C); *see also* 47 U.S.C. § 227(c)(5). "[T]he court has wide discretion in determining the amount of damages to be awarded within statutory limits." *See Andrews v. All Green Carpet & Floor Cleaning Serv.*, 2015 WL 3649585, at *6 (C.D Cal. June 11, 2015) (internal quotations and citation omitted). The Court determines that damages of $500 per call—amounting to $27,000—is sufficient to both compensate Plaintiff for the calls he received from Richardson and to discourage Richardson from engaging in such behavior in the future. Additionally, without any development of the record in this case, the Court does not know whether there are any facts that would support trebling the damages. Taking Plaintiff's representations in the complaint as true, each of the 54 artificial or pre-recorded voice calls violated § 227(b), so the damages under this section amount to $27,000.

As to violations of § 227(c), the Court will likewise award $500 per violation under § 227(d)(5)(B). Plaintiff has not demonstrated any actual damages, but the statute entitles him to the *greater* of $500 or his actual damages. The Court will not exercise its discretion to treble the damages under this section either, as no evidence has been adduced to support a finding of a willful or knowing violation. To figure out how many violations of § 227(c) occurred that Plaintiff can recover for, the Court asks how many calls Plaintiff received that were "more than

one telephone call within any 12-month period by or on behalf of the same entity." 47 U.S.C. § 227(d)(5). Plaintiff identifies two "monikers" used for Defendants' client(s): "American Benefits" and "Senior Benefits," both selling final expense insurance using similar calling scripts; they appear to be the same entity operating under different names. (*See* Dkt. No. 40 at 14–15.) Drawing an inference in Plaintiff's favor, the Court will find that each subsequent call was "on behalf of the same entity" as the initial call. The first call occurred on July 12, 2022, and the calls continued periodically through August 22, 2023, with the largest gap between them being about three months. (Dkt. No. 40 at 18–19.) Thus, all the calls occurred within 12 months of another call from the same entity.

There is also the question of whether Plaintiff can recover for the very first call. The text of the statute appears to exclude the first call, but at least one appellate court has specifically held that the first call should be included, relying on the remedial purpose of the statue and holding that "[t]he requirement of being a 'person who has received more than one telephone call' is merely a threshold requirement that, once met, allows recovery for each call." *Charvat v. GVN Michigan, Inc.*, 561 F.3d 623, 630–631 (6th Cir. 2009). Preferring to err on the side of furthering the statute's remedial aim, the Court will include the first call in the recovery. Therefore, the Court counts 77 violations of § 227(c), for a total of $38,500 in statutory damages. Between § 227(b) and § 227(c), Plaintiff is entitled to $65,500 in statutory damages for his TCPA claims.

State Law Claims

For Plaintiff's state law claims, the Court bifurcates its analysis both by timeframe and statute. First, Plaintiff has claims under both Washington Revised Code § 80.36.390 (the Washington Do Not Call Statute ("WDNC")) and § 80.36.400 (the Washington Automatic

Dialing and Announcing Device Act ("WADAD")). The Ninth Circuit has held that damages under each of these statutes needs to be calculated separately. *Barton v. JMS Assoc. Mktg., LLC*, No. 21-35836, 2023 WL 2009925, at *2 (9th Cir. Feb. 15, 2023). And as with the TCPA, there may be multiple violations per call. The WDNC provides that "the court shall award damages . . . *for each individual violation* of this section." Wash Rev. Code § 80.36.390(13) (emphasis added). The WADAD provides for damages "per violation of this section." Wash Rev. Code § 80.36.400(4).

Second, both these statutes were amended effective July 23, 2023 increasing the minimum damages, from $100 to $1,000 (WDNC) and from $500 to $1,000 (WADAD), respectively.[5] *See* WA LEGIS 103 (2023), 2023 Wash. Legis. Serv. Ch. 103 (S.H.B. 1051). The Court will only apply those changes prospectively. *See Barton v. J.M.S. Assoc. Mktg., LLC*, No. 3:21-CV-05509-RJB, 2023 WL 5277682, at *3 (W.D. Wash. Aug. 16, 2023) (finding that increase in damages is prospective).

Next, the Court turns to a section-by-section analysis, starting with the WDNC. As to Plaintiff's claim under former § 80.36.390(6) and current § 80.36.390(7) for calling within one year of a do not call request, Plaintiff alleges that he requested not to be called during the first call on July 12, 2022, and again periodically until August 1, 2023. (*See* Dkt. No. 39 at 17–19.) Thus, all of the calls appear to violate this section, and the Court will include recovery for the first call, mirroring its analysis as to § 227(c). *See supra*. Plaintiff lists 69 calls occurring before July 23, 2023 (*see* Dkt. No. 39 at 17–19), so he is awarded $100 per call, for a total of $6,900.

[5] The statute refers to both "fines" and "damages;" as a private litigant, Plaintiff is entitled to the latter. *Barton*, 2023 WL 2009925, at *2.

He lists an additional eight calls occurring on or after July 23, 2023, so he is awarded $8,000 for those calls.

The Court further found that Plaintiff's claim under § 80.36.390(9) was adequately pled, but that section only took effect on July 23, 2023. As to the eight calls occurring on or after that date, he is awarded an additional $1,000 per call, or $8,000 total. Finally, as to Plaintiff's WADAD claim, the Court analyzed that Plaintiff adequately pled a claim under Washington Revised Code § 80.36.400(2) as to each call at issue. *See supra* at Section III. Therefore, the Court will award WADAD damages as to each of the calls. Plaintiff is awarded $500 per call for the 69 calls occurring before July 23, 2023, for a total of $34,500, and is awarded $1,000 for each of the eight calls occurring on or after that date, for a total of $8,000.[6]

Summary of Damages

Plaintiff's statutory damages are as follows:

Statute	**Award**
47 U.S.C. § 227(b)	$27,000
47 U.S.C. § 227(c)	$38,500
Wash. Rev. Code § 80.36.390(6)/(7)	$14,900
Wash. Rev. Code § 80.36.390(9)	$8,000
Wash. Rev. Code § 80.36.400	$42,500
GRAND TOTAL:	**$130,900**

[6] Plaintiff argues that former Washington Revised Code § 80.36.400(3) (1986) provides that "a violation of this chapter is a violation of the [Washington Consumer Protection Act ("CPA"), Wash. Rev. Code § 19.86, *et. seq.*]," thus he is entitled to CPA treble damages. (Dkt. No. 91 at 8.) The CPA provides that "the court may, in its discretion, increase the award of damages up to an amount not to exceed three times the actual damages sustained." Wash. Rev. Code § 19.86.090. Plaintiff has pleaded only statutory damages under the WADAD. (Dkt. No. 39 at 47.) Thus, the Court cannot award treble damages. *See Rinky Dink*, 2013 WL 12074984, at *3.

V CONCLUSION

The Court GRANTS default judgment to Plaintiff and enters JUDGMENT in the amount of $130,900 against Defendant Deryck D. Richardson.

Dated this 24th day of November, 2025.

David G. Estudillo
United States District Judge