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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 NATHEN W. BARTON,

10 Plaintiff,

11 v.

12 J.M.S. ASSOCIATE MARKETING,
13 LLC, JOSETTE M. SELBERT, TELE
14 TRANSFORM, VIVID HEAR and
15 JOHN DOE 1-10,

16 Defendants.

CASE NO. 21-5509 RJB

ORDER ON MOTION FOR
RECONSIDERATION ON ORDER
GRANTING DEFAULT
JUDGMENT

17 The matter comes before the Court on the Plaintiff's Motion for Reconsideration on the
18 Order Default Judgment. Dkt. 18. The Court has considered the pleadings filed regarding the
19 motion and the remaining file.

20 On July 15, 2021, the Plaintiff, acting *pro se*, filed this case asserting claims under the
21 Telephone Consumer Protection Act, 47 U.S.C. § 227, *et. seq.* ("TCPA") and state law for the
22 Defendants' alleged six solicitations of the Plaintiff, by telephone, without his consent while his
23 phone number was registered on the national Do-Not-Call Registry. Dkt. 1. The Plaintiff seeks
24 damages and treble damages under 47 U.S.C. § 277(b)(3), costs, and injunctive relief that the
Court "enjoin the Defendants from further violations of State and Federal telemarketing laws."

Id.

1 After they were served and failed to appear in the case or otherwise respond, on August
2 16, 2021, the Plaintiff moved for an entry of default against Defendants J.M.S. Associate
3 Marketing, LLC (“J.M.S.”) and Josette M. Selbert. Dkt. 12. The Clerk of the Court entered
4 default on August 18, 2021 against these parties. Dkt. 14. On September 9, 2021, the Plaintiff’s
5 motion for default judgment was granted, in part, and denied, in part. Dkt. 17. Judgment in the
6 amount of \$12,000 was entered against J.M.S. and was denied as to Josette M. Selbert. *Id.* The
7 claims asserted against Ms. Selbert were dismissed without prejudice. *Id.* The facts and
8 procedural history are in the September 9, 2021 Order (Dkt. 17) and are adopted here.

9 The Plaintiff now moves for reconsideration of the September 9, 2021 Order, arguing that
10 he suffered actual damages which were not awarded in the Order, that he is entitled to statutory
11 damages for the two calls (#2 & #6) which were made that he did not answer, and that he is
12 entitled to additional statutory damages. Dkt. 18. The Plaintiff additionally moves the Court for
13 an order amending the judgment to add an award of costs: \$402 for the filing fee and \$75 for the
14 costs to serve J.M.S. *Id.*

15 This opinion will first consider the Plaintiff’s motion for reconsideration and then his
16 motion to amend the judgment to add an award of costs.

17 **Motion for Reconsideration.** Pursuant to Local Rule W.D. Wash. (“Local Rule”) 7(h),
18 “[m]otions for reconsideration are disfavored. The court will ordinarily deny such motions in the
19 absence of a showing of manifest error in the prior ruling or a showing of new facts or legal
20 authority which could not have been brought to its attention earlier with reasonable diligence.”

21 The Plaintiff’s Motion for a Reconsideration (Dkt. 18) should be denied. The Plaintiff has
22 failed to point to a “manifest error in the prior ruling or a showing of new facts or legal authority
23 which could not have been brought to its attention earlier with reasonable diligence.” While the
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1 Plaintiff argues that his phone plan had a limit of 100 minutes or text messages a month, he fails
2 to provide any evidence on the actual cost to him of these very brief phone calls. That is, the
3 amount he pays per minute by the number of minutes used by these calls. The amount is likely
4 de minimus. Further, the Plaintiff fails to point to any authority that he is entitled to the
5 additional statutory damages he claims. His motion for reconsideration (Dkt. 18) should be
6 denied and the September 9, 2021 Order (Dkt. 17) is affirmed.

7 **Motion for Costs.** The September 9, 2021 Order provided, “[t]he Plaintiff makes a
8 claim for costs in his Complaint. He does not include such a claim in his motion [for default
9 judgment]. To the extent he seeks an entry of judgment against J.M.S. for costs, he should
10 comply with Fed. R. Civ. P. 54(d) and Local Rule W.D. Wash. 54.”

11 Pursuant to Fed. R. Civ. P. 54(d), “costs . . . should be allowed to the prevailing party.”
12 Local Rule 54(d) provides:

13 (1) Motion to Tax Costs/Bill of Costs. The party in whose favor a judgment is
14 rendered, and who seeks to recover costs, shall, within twenty-one days after the
15 entry of judgment, file and serve a motion for costs and necessary disbursements,
16 also known as a bill of costs. The motion for costs shall be noted for consideration
17 pursuant to LCR 7(d)(3). All costs shall be specified, so that the nature of the
18 charge can be readily understood. The movant shall verify, in a declaration sworn
19 under penalty of perjury by the party, an attorney of record, or an agent having
20 knowledge of the facts, that each requested cost is correct and has been
21 necessarily incurred in the case and that the services for which fees have been
22 charged were actually and necessarily performed. The fees referred to in this
23 section refer to filing fees, witness fees, and other types of fees but not to
24 attorney’s fees. The movant may use a Bill of Costs form, available on the court’s
website, to list the costs and complete the required declaration.

If the party in whose favor judgment is rendered fails to file a motion for costs, all costs, other than statutory costs, shall be deemed to be waived.

The Plaintiff’s motion for an award of costs (Dkt. 18) should be denied without prejudice. He must follow Local Rule 54(d) to secure a cost judgment.

1 **Other Matters.** On August 26, 2021, the Plaintiff’s Motion for a Protective Order was
2 denied. Dkt. 15. In that order, the Court noted that it is not clear whether the Plaintiff has
3 attempted service on Tele Transform, Vivid Hear, or the John Does. The Plaintiffs Complaint
4 appears to assert that these are not real companies and are fictitious. Dkt. 1. If he intends to serve
5 Tele Transform, Vivid Hear, or the John Does, the Plaintiff is reminded that under Fed. R. Civ.
6 P. 4(m) service should generally be made with 90 days of the filing of the Complaint or the
7 claims against those parties may be dismissed. The Complaint was filed on July 15, 2021.

8 Defendants other than Tele Transform, Vivid Hear, and the John Does in this case have
9 either been dismissed or judgment has been entered against them. This case should be closed if
10 all claims have been resolved. Accordingly, by **October 22, 2021**, the Plaintiff should either file
11 a proof of service on Tele Transform, Vivid Hear, and the John Does or in writing, show cause,
12 if any he has, why the claims asserted against them should not be dismissed without prejudice
13 and this case closed.

14 **IT IS ORDERED THAT:**

- 15 • The Plaintiff’s Motion for Reconsideration (Dkt. 18) **IS DENIED**;
- 16 • The Plaintiff’s Motion to Amend the Judgment to add an award of Costs (Dkt.
17 18) **IS DENIED WITHOUT PREJUDICE**; and
- 18 • By **October 22, 2021**, the Plaintiff **SHALL** either (1) file a proof of service on
19 Tele Transform, Vivid Hear, and the John Does or (2) in writing, show cause, if
20 any he has, why the claims asserted against them should not be dismissed
21 without prejudice and this case closed.

1 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
2 to any party appearing *pro se* at said party's last known address.

3 Dated this 16th day of September, 2021

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5 ROBERT J. BRYAN
6 United States District Judge

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