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**FOR PUBLICATION**

**IN THE SUPERIOR COURT  
 FOR THE  
 COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

<b>THE FINANCIAL &amp; INSURANCE</b>	)	<b>CIVIL ACTION NO. 18-0491</b>
<b>SERVICES GROUP, INC.,</b>	)	
	)	<b>ORDER GRANTING PARTIAL</b>
<b>Plaintiff,</b>	)	<b>DEFAULT JUDGMENT FOR PRINCIPAL</b>
	)	<b>AND FILING FEE AND DENYING</b>
<b>v.</b>	)	<b>COSTS, ATTORNEY’S FEES, AND</b>
	)	<b>PREJUDGMENT INTEREST PURSUANT</b>
<b>ALBERT R. MOOLANG,</b>	)	<b>TO NMI. R. CIV. P. 54(d) AND</b>
	)	<b>CNMI SUPERIOR COURT ACTION NO.</b>
<b>Defendant.</b>	)	<b>2018-0001</b>
	)	
	)	

**I. INTRODUCTION**

**THIS CIVIL ACTION** concerns a loan agreement between Plaintiff The Financial & Insurance Services Group, Inc. (“Plaintiff”) and Defendant Albert R. Moolang (“Defendant”) dated December 17, 2015.

**II. STATEMENT OF FACTS**

On September 5, 2018, Plaintiff filed a Complaint alleging that Defendant defaulted on the loan agreement and demanding judgment over and against Defendant for the principal sum due of \$843.43; pre-judgment interest from October 2, 2018 at the rate of 24% per annum; late charges in the amount of \$50.00; reasonable attorney’s fees; court costs; and post-judgment interest at the maximum rate provided by law from the date of judgment.

1. The Complaint and Summons were served on Defendant on January 8, 2019.

*By order of the Court, Associate Judge Joseph N. Camacho*

- 1 2. On March 26, 2019, Plaintiff filed a Request to Enter Default and a supporting declaration  
2 representing that the time within which Defendant may answer or otherwise move as to the  
3 Complaint has expired; that Defendant has not answered or otherwise moved; and that the  
4 time for Defendant to answer or otherwise move has not been extended.
- 5 3. On March 26, 2019, Plaintiff requested an Entry of Default under NMI R. Civ. P. 55 due to  
6 Defendant's failure to plead or otherwise defend.
- 7 4. The Clerk of Court subsequently entered an Entry of Default against the Defendant under  
8 NMI R. Civ. P. 55(a). The Entry of Default was reviewed by the Clerk of Court and filed on  
9 March 28, 2019.
- 10 5. On March 26, 2019, Plaintiff also simultaneously filed a Request for Default Judgment, a  
11 supporting declaration, and a proposed Default Judgment.<sup>1</sup>
- 12 6. In its request and declaration accompanying the Request for Default Judgment, Plaintiff  
13 requested a \$1,244.77 default judgment against Defendant for: \$843.43 in principal due;  
14 \$89.84 in pre-judgment interest at 24% per annum from October 2, 2018 to March 13, 2019;  
15 \$50.00 in late charges; and \$261.50 in costs.
- 16 7. In addition to the \$1,244.77, the proposed Default Judgment submitted by Plaintiff also  
17 requested for attorney's fees as may be fixed by the Court pursuant to NMI R. Civ. P.  
18 54(d)(2) and post-judgment interest at the rate of 9% per annum from March 13, 2019.

19 Having reviewed the filings, relevant law, and factual record, the Court hereby issues the  
20 following Order.

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24 <sup>1</sup> Plaintiff simultaneously filed on March 26, 2019, the Request for Entry of Default and the Request for Default Judgment.

1 **III. LEGAL STANDARDS**

2 This case requires the Court to consider default judgments and requests for attorney fees and  
3 costs under the various provisions of the CNMI Rules of Civil Procedure.

4 **A. Awarding Costs and Attorney Fees under Rule 54.**

5 NMI R. CIV. P. 54 is the controlling authority for which attorney fees and costs may be  
6 awarded to the prevailing party of a lawsuit.

7 **1. Awarding Costs under Rule 54(d)(1).**

8 NMI R. CIV. P. 54(d)(1) provides for an allowance of taxable costs to the prevailing party in  
9 litigation as a matter of course “*unless the court otherwise directs*” (emphasis added).

10 **2. Awarding Attorney Fees under Rule 54(d)(2).**

11 Under NMI R. CIV. P. 54(d)(2), a claim for attorney’s fees and related nontaxable expenses  
12 must be filed and served by motion no more than fourteen (14) days after the entry of a judgment  
13 unless those fees are required to be proven at trial as an element of damages. NMI R. CIV. P.  
14 54(d)(2)(D) further provides that the Court “may establish special procedures by which issues  
15 relating to such fees may be resolved without extensive evidentiary hearings.”<sup>2</sup>

16 **B. Default Judgments under Rule 55.**

17 NMI R. CIV. P. 55 provides the mechanisms by which a party’s default for failure to plead  
18 or otherwise defend may be entered and by which default judgments may be granted.

19 **1. Entry of Default under Rule 55(a).**

20 The Clerk of Court is authorized to enter an entry of default when a party against whom a  
21 judgment for affirmative relief is sought has failed to plead or otherwise defend and that fact is  
22 made to appear by affidavit. NMI R. CIV. P. 55(a).

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24 <sup>2</sup> The Superior Court of the Northern Mariana Islands did adopt a procedure relating to attorney fees in CNMI Superior Court Action 2018-0001.

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**2. Default Judgment by the Clerk under Rule 55(b)(1).**

A default judgment may be entered by the Clerk of Court when the defendant has failed to appear, is not an infant or incompetent person, and the plaintiff seeks a claim “for a sum certain or for a sum which can be made certain by simple computation.” NMI R. CIV. P. 55(b)(1). However, the Clerk of Court is not authorized to grant default judgments that include uncertain amounts of interest, attorney fees, and other nontaxable costs. *See Perry v. Williams*, 346 P.3d 211, 216 (Haw. Ct. App. 2015).

**3. Default Judgment by the Court under Rule 55(b)(2).**

When a party requests for a default judgment that is for an amount other than a sum certain, the request may only be considered and granted by the Court. NMI R. CIV. P. 55(b)(2). In its discretion, the Court may conduct hearings or order other references as it deems necessary and proper to enter the default judgment or to carry it into effect. *Id.*

**IV. DISCUSSION**

**A. Step One: Entry of Default**

Generally, default judgments are viewed with disfavor by the Courts because of the “strong [public] policy” of determining cases on their merits. *Eitel v. McCool*, 782 F.2d 1470, 1472 (9th Cir. 1986). Notwithstanding the general public policy to have cases decided on their merits, it is well established that here in the CNMI, NMI R. CIV. P. 55 allows for entries of default and default judgments in certain situations where a defendant has failed to plead or otherwise defend. *See, e.g., Santos v. Santos*, 2001 MP 12 ¶ 17.

Based on the evidence before the Court, Defendant has failed to appear or otherwise defend against this lawsuit after proper service of the Summons and Complaint on September 18, 2018. The Court therefore finds that the Clerk of Court properly entered the entry of default against the Defendant.

1           **B. Step Two: Default Judgment**

2           Notwithstanding the Entry of Default, Plaintiff is not automatically entitled to a default  
3 judgment in the amount of damages and costs requested. An entry of default is not an admission by  
4 a defendant of his liability and the plaintiff's right to recover, rather it is “an admission of the facts  
5 cited in the Complaint, which by themselves may or may not be sufficient to establish a defendant's  
6 liability.” *Pitts ex rel. Pitts v. Seneca Sports, Inc.*, 321 F. Supp.2d 1353, 1357 (S.D. Ga. 2004).<sup>3</sup>

7           To that end, the Court has reviewed the Complaint and finds that the Complaint does set  
8 forth a viable cause of action and liability against Defendant. The well-pleaded factual allegations  
9 of the Complaint reflect that Defendant executed a loan agreement with Plaintiff and promised to  
10 make payments on it. Defendant thereafter breached the agreement—and caused damage to  
11 Plaintiff—by failing to make those payments.

12           **C. Step Three: In Default Judgment, A Finding of Defendant’s Liability Is Necessary.**

13           The factual allegations in the Complaint are adequate to state a claim for breach of contract.  
14 Because the factual allegations in the Complaint are deemed admitted by virtue of Defendant’s  
15 default, and because the factual allegations are sufficient to state a claim for breach of contract, the  
16 Court hereby finds that Defendant is liable to Plaintiff for breach of contract.

17           However, the amount of damages and costs requested by the Plaintiff is a separate issue  
18 from liability that requires further inquiry and evidence.

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22       <sup>3</sup> See also *Nishimatsu Constr. Co. v. Hous. Nat'l Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975) (“[A] defendant's default  
23 does not in itself warrant the court in entering a default judgment. There must be a sufficient basis in the pleadings for  
the judgment entered.”); *Virgin Records America, Inc. v. Lacey*, 510 F. Supp.2d 588, 593 n.5 (S.D. Ala. 2007) (“While  
24 well-pleaded facts in the complaint are deemed admitted, plaintiffs' allegations relating to the amount of damages are  
not admitted by virtue of default; rather, the court must determine both the amount and character of damages.”).

1                   **D. Step Four: In Default Judgment, Facts Are Admitted but Damages**  
2                   **Must Be Proven.**

3                   **1. Legal Considerations for Determining Damages.**

4                   In the default judgment context, Plaintiff must still prove its damages. *See Anheuser Busch,*  
5 *Inc. v. Philpot*, 317 F.3d 1264, 1266 (11th Cir. 2003).<sup>4</sup> “The general rule of law is that upon  
6 default[,] the factual allegations of the complaint, *except those relating to the amount of damages,*  
7 will be taken as true.” *Geddes v. United Fin. Grp.*, 559 F.2d 557, 560 (9th Cir. 1977) (emphasis  
8 added). Thus, with default judgments, “[a] court has an obligation to assure that there is a legitimate  
9 basis for any damage award it enters.” *PNCEF, LLC v. Hendricks Bldg. Supply LLC*, 740 F. Supp.  
10 2d 1287, 1292 (S.D. Ala. 2010) (quoting *Anheuser Busch, Inc. v. Philpot*, 317 F.3d 1264, 1266  
11 (11th Cir. 2003)).

12                   Here, Plaintiff’s Request for Default Judgment in the total amount of \$1,244.77 is not for a  
13 liquidated, sum certain amount of money, and no evidence is provided on the record to support the  
14 requested amount. The total amount requested includes attorney fees, pre-judgment, and a late  
15 charge. Accordingly, the Court must review these amounts and Plaintiff must show “what those  
16 damages are, how they are calculated, and where they come from.” *PNCEF, LLC*, 740 F. Supp.2d  
17 at 1294.

18                   **2. Plaintiff’s Requested Fees and Charges.**

19                   Specifically, Plaintiff requests for \$843.43 in principal due; \$261.50 in costs; \$50.00 in late  
20 charges; \$89.84 in pre-judgment interest from October 2, 2018 to March 13, 2019 at 24% per  
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23 <sup>4</sup> *See also Adolph Coors Co. v. Movement Against Racism and the Klan*, 777 F.2d 1538, 1544 (11th Cir. 1985)  
24 (explaining that damages may be awarded on default judgment only if the record adequately reflects the basis for  
award); *Everyday Learning Corp. v. Larson*, 242 F.3d 815, 818 (8th Cir. 2001) (affirming lower court’s decision not to  
award damages on default judgment, where requested damages were “speculative and not proven by a fair  
preponderance of the evidence”).

1 annum; post-judgment interest “at the rate of 9% per annum from March 13, 2019;”<sup>5</sup> and attorney’s  
2 fees as may be fixed by the Court pursuant to NMI R. CIV. P. 54(d)(2). The offers of proof  
3 submitted in support of Plaintiff’s claim for damages in these amounts are: (i) a Declaration for  
4 Default Judgment signed by Plaintiff’s Counsel Michael A. White, attesting to the requested  
5 judgment amounts; and (ii) a copy of a one-page document titled “Federal Truth-In-Lending  
6 Disclosure Statement Loan Number: 105614501” which is dated December 17, 2015 (hereinafter  
7 the “loan document”). (Pl.’s Compl., Ex. A). The top of the loan document identifies the Plaintiff as  
8 the “Lender” and Defendant as the “Borrower.” *Id.* The loan document also bears Defendant’s  
9 signature at the bottom. *Id.*

10 **a. Principal Sum Due.**

11 Plaintiff’s underlying claim is that Defendant owes \$843.43 in principal under their loan  
12 agreement. Plaintiff’s filings establish that a loan was executed between the parties in 2015 for the  
13 financed amount of \$4,004.45 and that the amount of principal due Plaintiff from Defendant was  
14 \$843.43 when this civil case was filed. The Court finds that this evidence contains enough details to  
15 prove by a preponderance of the evidence that Plaintiff is owed the amount sought. Plaintiff has  
16 established and demonstrated the damages as to the principal amount due.

17 Therefore, Plaintiff’s request for \$843.43 in principal due is **GRANTED**.

18 **b. Costs.**

19 Plaintiff also requests for \$261.50 in costs. Plaintiff’s filings contain no further explanation  
20 of the costs and there is no evidence before the Court regarding what the \$261.50 in costs are  
21 comprised of. The filing fee for a Civil Action Complaint is \$225.00 according to the CNMI  
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24 <sup>5</sup> Pl.’s proposed Default J.

1 Judiciary Fee Schedule but Plaintiff filed no information on what the remaining \$36.50 in requested  
2 costs are and whether they were in fact paid.

3 NMI R. Civ. P. 54(d)(1) states in relevant part that “costs other than attorneys’ fees shall be  
4 allowed as of course to the prevailing party unless the court otherwise directs.” This creates a  
5 presumption that the prevailing party should be awarded costs. *See Save Our Valley v. Sound*  
6 *Transit*, 335 F.3d 932, 944-45 (9th Cir. 2003); *see also Holton v. City of Thomasville Sch. Dist.*,  
7 425 F.3d 1325, 1355 (11th Cir. 2005) (quoting *Chapman v. AI Transp.*, 229 F.3d 1012, 1038-39  
8 (11th Cir. 2000) (stating that the presumption entails granting the full costs).<sup>6</sup> The burden is on the  
9 losing party to show why the Court should deviate from its normal course of action. *See Save Our*  
10 *Valley*, 335 F.3d at 944-45.

11 Here, Plaintiff filed this collection matter as a civil action. NMI R. Civ. P. 2 (“[t]here shall  
12 be one form of action to be known as “civil action”). Commonwealth law permits civil cases to be  
13 filed as small claims cases if the amount sought is \$5,000 or less. NMI R. Civ. P. 83(a). However,  
14 this option is not mandatory. NMI R. Civ. P. 83(a) (“A plaintiff *may* file a case under this small  
15 claims procedure for any civil action within the jurisdiction of the court, involving a claim the value  
16 of which is five thousand (\$5,000.00) dollars or less, exclusive of interest, attorneys’ fees and  
17 costs.”) (emphasis added).

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21 <sup>6</sup> Compare NMI R. Civ. P. 54(d)(1) (“Except when express provision therefor is made either in a statute of the  
22 Commonwealth or in these rules, *costs other than attorneys’ fees shall be allowed as of course to the prevailing party*  
23 *unless the court otherwise directs*; but costs against the Commonwealth, its officers, and agencies shall be imposed only  
24 to the extent permitted by law. Such costs may be taxed by the clerk on one day’s notice. On motion served within five  
days thereafter, the action of the clerk may be reviewed by the court.”) (emphasis added), with FED. R. CIV. P. 54(d)(1)  
 (“*Unless a federal statute, these rules, or a court order provides otherwise, costs—other than attorney’s fees—should be*  
*allowed to the prevailing party*. But costs against the United States, its officers, and its agencies may be imposed only  
to the extent allowed by law. The clerk may tax costs on 14 days’ notice. On motion served within the next 7 days, the  
court may review the clerk’s action.”) (emphasis added).



1 collection of 24% interest after a borrower fails to make payments as set out in the loan document.<sup>9</sup>

2 There is nothing before the Court to indicate that the pre-judgment interest starts from October 2,  
3 2018.

4 Accordingly, Plaintiff's request for pre-judgment interest is **DENIED**.

5 **e. Post-judgment Interest.**

6 Plaintiff also requests for post-judgment interest "at the rate of 9% per annum from March  
7 13, 2019"<sup>10</sup> in its proposed Default Judgment. This 9% post-judgment is authorized by 7 CMC §  
8 4101.<sup>11</sup> Therefore, the post-judgment interest shall accrue at the rate of 9% per annum as required  
9 by statute beginning on the date the final judgment is entered for this civil action.

10 The request for 9% post-judgment interest is **GRANTED**.

11 **f. Attorney Fees.**

12 Plaintiff is also requesting for an award of attorney's fees as may be fixed by the Court  
13 pursuant to NMI R. CIV. P. 54(d)(2). (Pl.'s proposed Default J.). However, Plaintiff's request is  
14 premature as it fails to comply with both the requirements of the Commonwealth Rules of Civil  
15 Procedure, and the CNMI Superior Court Action No. 2018-0001, which sets procedure to  
16 specifically resolve requests for attorney fees.

17 A claim for attorney's fees under NMI R. CIV. P. 54(d)(2) must be made by motion no later  
18 than fourteen (14) days *after entry of judgment* (unless the substantive law requires those fees to be  
19 proved at trial as an element of damages). Moreover, the motion must "be *filed and served* ...; must  
20 *specify the judgment and the statute, rule, or other grounds* entitling the moving party to the

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22 <sup>9</sup> The loan document does not explicitly provide for a defendant to pay the entire unpaid principal balance due and all  
accrued unpaid interest upon the failure to timely make all the payments.

23 <sup>10</sup> Pl.'s proposed Default J.

24 <sup>11</sup> "Every judgment for the payment of money shall bear interest at the rate of nine percent a year from the date it is  
entered." 7 CMC § 4101.

1 award; and *must state the amount or provide a fair estimate* of the amount sought.” *Id.* (emphasis  
2 added).

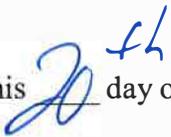
3 Here, Plaintiff’s request for such attorney’s fees as may be fixed by the Court fails to  
4 comply with NMI R. Civ. P. 54(d)(2). Plaintiff’s request fails to identify the judgment or legal basis  
5 upon which the attorney’s fees are based, is for an uncertain amount, has not been served on the  
6 opposing party, and contains none of the information necessary for the Court to make a  
7 reasonableness determination as required by the specific procedure enacted in CNMI Superior  
8 Court Action No. 2018-0001.<sup>12</sup>

9 Therefore, Plaintiff’s request for award of attorney’s fees is **DENIED**.

10 **V. CONCLUSION**

11 For the foregoing reasons, the Court FINDS and **GRANTS** a Partial Default Judgment in  
12 favor of Plaintiff in the Amount of **\$1,068.43** (\$843.43 IN PRINCIPAL AND \$225.00 IN COSTS).  
13 In addition, Plaintiff is entitled by law to 9% post-judgment interest starting on the date this Order  
14 is issued.

15 Without additional evidence, the motion for a default judgment in the other requested fees  
16 and charges is **DENIED** pursuant to NMI R. Civ. P. 54(d) and CNMI Superior Court Action No.  
17 2018-0001.

18 **IT IS SO ORDERED** this  day of May, 2019.

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21 **JOSEPH N. CAMACHO**, Associate Judge

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24 <sup>12</sup> A request for attorney fees must comply with CNMI Superior Court Action No. 2018-0001, which requires parties seeking an award of attorney’s fees to submit the legal basis for the fees.