E-FILED
CNMI SUPERIOR COURT
E-filed: Jan 10 2025 12:53PM
Clerk Review: Jan 10 2025 12:53PM
Filing ID: 75407908
Case Number: 20-0153-CV
N/A

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

AMY FAITH CASTRO REYES, Plaintiff, **vs.** **USRN, LLC dba GOLDEN PARK APARTMENTS** Defendant.	**CIVIL CASE NO. 20-0153** **ORDER GRANTING PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT**

I. INTRODUCTION

THIS MATTER came before the Court for a hearing on Plaintiff's Motion for Default Judgment on December 10, 2024, at 9:00 a.m. in Courtroom 217A, at the Superior Court, Guma' Hustisia, Susupe, Saipan, Commonwealth of the Northern Mariana Islands. Amy Faith Castro Reyes ("Plaintiff") did not appear but was represented by Christopher Heeb. USRN, LLC ("Defendant") did not appear but was represented by Stephen Woodruff.

Plaintiff's Motion sought Default Judgment against Defendant following an April 26, 2022 Entry of Default. The Court denied Defendant's August 5, 2024 Motion to Set Aside Entry of Default, and proceeded with a Default Judgment hearing on December 10, 2024. The Court now **GRANTS** Plaintiff's Motion for Default Judgment and **FINDS** Defendant liable to Plaintiff for damages in the amount of eight thousand two hundred and five dollars and twenty cents (**$8,205.20**).

/// /// /// /// /// /// ///

II. BACKGROUND

On November 21, 2019, Plaintiff and Defendant entered into a one (1) year residential lease agreement. Plaintiff leased a unit from Defendant at Golden Park Apartments in Susupe, Saipan. From March 6 through March 10, 2020, and again from May 6 through June 3, 2020 (thirty-four [34] total days), Defendant shut off Plaintiff's utilities, namely water and electricity. Defendant stated the shut-offs stemmed from late utility payments, failure to pay a late fee, and an unsatisfied personal loan between Plaintiff and Defendant's building manager. However, Defendant had "overcharged Reyes [for utilities] by an amount of seventy-three dollars and sixty cents ($73.60)." *See* Amended Complaint at 5 ¶ 31(Apr. 6, 2021). Defendant had "charged [Plaintiff] a rate above the [Commonwealth Utilities Corporation] published residential rate for power." *See id*., at 5 ¶ 28.

> [Defendant] shut off [Plaintiff's] utilities in retaliation for [Plaintiff] not paying a penalty fee for a prior late payment on utilities and a dispute over whether [Plaintiff's] May payment was one-hundred and fifty dollars ($150) versus one hundred twenty dollars ($120).
>
> The alleged penalty fee for the prior late payment of utilities was not authorized by the lease and [was] otherwise unlawful.

See id., at 2 ¶ 9. "The lack of electrical power . . . impacted [Plaintiff's] ability to cook for her family, . . . cool her unit for sleeping and . . . operate her 11-year-old daughter's [asthma] nebulizer," among other problems. *See id*., at 3 ¶ 12.

On June 1, 2020, Plaintiff filed the instant action, stating that the utility shut-offs were unlawful and unauthorized in the lease. On June 3, 2020, Defendant was served with Plaintiff's Complaint; Defendant restored Plaintiff's utilities that day. *See* Verified Complaint (Jun. 1, 2020). On June 5, 2020, Defendant, through then-counsel James Sirok, filed its Answer and Affirmative Defenses, along with a Counterclaim for eviction. *See* Answer and Affirmative Defenses (Jun. 5, 2020). At a June 9, 2020 conciliation hearing, Plaintiff agreed to vacate the lease premises. On July 9, 2020, Plaintiff vacated and the parties stipulated to dismiss Defendant's counterclaim.

On July 13, 2020, the Court granted James Sirok's Motion to Withdraw as Defendant's counsel. *See* Ord. Permitting Withdrawal (Jul. 13, 2020). As a corporation, Defendant could not appear in CNMI legal proceedings without counsel. *See Chen's Corp. v. Hambros*, 2007 MP 04 ¶ 8. On July 28, 2020, Defendant appeared for a status conference with an authorized representative but without counsel. The Court ordered Defendant to appear with licensed counsel and continued the status conference. On September 1, 2020, attorney Joe Hill entered a special appearance for Defendant and requested to further continue the hearing. On October 22, 2020, Defendant again appeared via an authorized representative and informed the Court that it had been unable to retain counsel.

On March 5, 2021, Plaintiff filed a Motion to Amend Complaint to include damages and remove causes of action rendered moot by her departure from the lease premises. *See* Amended Complaint (Apr. 6, 2021). Defendant did not oppose Plaintiff's Motion to Amend Complaint at that time. On April 7, 2021, the Court granted Plaintiff's Motion to Amend Complaint.

On April 21, 2022, Plaintiff filed Motion for Entry of Default, citing Defendant's repeated failure to retain and appear with counsel. *See* M. Entry of Default (Apr. 21, 2022). Defendant did not submit any opposition to this Motion. On April 26, 2022, the Court entered default against Defendant. *See* Entry of Default (Apr. 26, 2022). On June 24, 2024, Plaintiff motioned for default judgment. *See* M. Default Judgment (Jun. 24, 2024). On July 27, 2024, attorney Stephen Woodruff filed an entry of appearance for Defendant. On August 5, 2024, Defendant filed its Motion to Set Aside Entry of Default and Strike Amended Complaint.

On September 24, 2024, the Court denied Defendant's Motion to Set Aside Entry of Default and Strike Amended Complaint. On October 25, 2024, Defendant filed its Opposition to Plaintiff's Motion for Default Judgment. On November 8, 2024, Plaintiff filed her Reply to Defendant's

Opposition to Default Judgment. Counsels for both parties appeared for a Default Judgment hearing on December 10, 2024, to present arguments before the Court.

III. LEGAL STANDARD

Plaintiff's Motion seeks default judgment against Defendant. Default judgment is appropriate when "a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise." *See* NMI R. CIV. P. 55. Once default is entered, the Court must determine whether to grant default judgment. If default judgment is granted, and if Plaintiff's Complaint describes valid causes of action, the Court then determines damages. *See id*., 55(b)(2)(B).

The parties argued for different default judgment standards. Plaintiff argued that the Court should adopt a test laid out in the NMI Superior Court case *FISG v. Moolang*. *See The Financial & Insurance Services Group, Inc. v. Moolang*, Civ. No. 18-0491 (NMI Super. Ct. May 20, 2019) (Order Granting Partial Default Judgment . . . at 3). *Moolang* describes a four (4) prong test:

i. Determine whether default was properly entered. *See id*., at 4.

ii. Determine whether the complaint sets forth a viable cause of action. *See id*., at 5.

iii. Make a finding of Defendant's liability. *See id*.

iv. Plaintiff must prove damages. *See id*.

In the alternative, Defendant argued that the Court should adopt a test laid out by the Ninth Circuit Court of Appeals. *See Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986). *Eitel* describes a seven (7) prong test:

i. Determine the possibility of prejudice to Plaintiff. *See id*.

ii. Determine the merits of Plaintiff's substantive claim. *See id*.

iii. Assess the sufficiency of the complaint. *See id*.

iv. Balance the sum of money at stake with the severity of Defendant's conduct. *See id.*

v. Consider the possibility of a dispute concerning material facts. *See id.*

vi. Determine whether the default was due to excusable neglect. *See id.*

vii. Consider the strong public policy interest in deciding cases on the merits. *See id.*

If the Court grants Plaintiff's Motion for Default Judgment, it must then determine damages based on the causes of action and factual allegations in Plaintiff's Complaint. *See* NMI R. CIV. P. 55(b)(2)(B).

IV. DISCUSSION

The Court entered default against Defendant on April 26, 2022. The Court denied Defendant's Motion to Set Aside Entry of Default on September 24, 2024. Therefore, "a party . . . has failed to plead or otherwise defend, and that failure [has been] shown by affidavit or otherwise." *See* NMI R. CIV. P. 55. As such, the Court must now decide whether to grant default judgment. The Court will first determine which default judgment test to apply. It will then apply the chosen test to this matter and rule on Plaintiff's Motion for Default Judgment. If the Court grants default judgment, it will apply the well-pleaded facts of the Complaint to Plaintiff's causes of action. If Plaintiff is entitled to recovery, the Court will then calculate damages.

A. Default Judgment

The NMI Supreme Court emphasized the existence of "public policy favoring disposition of cases on their merits." *See Milne v. Po Tin*, 2001 MP 16 ¶ 22. A more rigorous standard that directly considers the "public policy favoring disposition of cases on their merits," therefore, comports with binding NMI Supreme Court precedent. NMI Superior Court opinions such as *Moolang* are persuasive, rather than binding, on this Court. *See* In Re Publication of Dispositive Opinions, Decisions and Orders, Supreme Court No. 2022-ADM-0006-MSC (Mar. 7, 2022).

Eitel considers the public policy interest in deciding cases on their merits. *See Eitel*, 782 F.2d at 1472. *Moolang* does not. *See Moolang,* Civ. No. 18-0491 (Order Granting Partial Default Judgment . . . at 3). Therefore, to follow binding precedent holding that "public policy favor[s] disposition of cases on their merits," the Court now **ADOPTS** the more rigorous Ninth Circuit *Eitel* test in lieu of the test laid out in *Moolang*. *See Milne*, 2001 MP 16 ¶ 22.

However, even when applying the *Eitel* test, the Court still finds default judgment appropriate in this matter. The *Eitel* factors, applied to this case, find as follows:

i. *Possibility of Prejudice to Plaintiff*

Applying *Eitel,* the Ninth Circuit-based District Court of the Northern Mariana Islands found that "a litigant seeking default judgment against a party that is unwilling to cooperate or defend itself will be without recourse if the court does not enter default judgment." *See Bridge Cap., LLC. V. Wilson*, No. 1:22-cv-00012, 2023 U.S. Dist. LEXIS 166979 at *4 (D. N. Mar. I. Sep. 20, 2023).

Here, the Court found that Defendant repeatedly failed to defend itself in this matter. *See* Ord. Denying D.'s M. Set Aside Entry of Default . . . at 6 (Sep. 24, 2024). In another NMI District Court case applying *Eitel*, the court found that a last-minute appearance by Defendant to oppose default did not mitigate the prejudice Plaintiff would suffer without default judgment. *See Unicorn Corp. v. Forson Holdings (CNMI), LLC*., No. 1:20-cv-00014, 2022 U.S. Dist. LEXIS 236000 at *19 (D. N. Mar. I. Feb. 18, 2022). Counsel for Defendant entered his appearance on July 27, 2024, less than two (2) weeks before an originally scheduled August 6, 2024 Default Judgment hearing. *See* Entry of Appearance (Jul. 27, 2024); *see also* Notice of Hearing (Jun. 27, 2024).

Since the Court entered default and declined to set it aside, Plaintiff would be prejudiced by a lack of legal recourse if the Court denied her Motion for Default Judgment. *See Bridge Cap.,*

LLC., No. 1:22-cv-00012, 2023 U.S. Dist. LEXIS 166979 at *4. The first *Eitel* factor, therefore, weighs in Plaintiff's favor.

ii. *Merits of Plaintiff's Substantive Claim*

The second and the third *Eitel* factors require that a Plaintiff "state a claim on which the [Plaintiff] may recover." *See Kloepping v. Fireman's Fund*, 1996 U.S. Dist. LEXIS 1786 at *2 (N.D. Cal. Feb. 13, 1996). These are the most important of the seven (7) *Eitel* factors. *See Vietnam Reform Party v. Viet Tan-Vietnam Reform Party*, 416 F. Supp. 3d 948, 962 (N.D. Cal. 2019). Upon entry of default, the Court is to take factual allegations in the complaint as true. *See Geddes v. United Fin. Group*, 559 F.2d 557, 560 (9th Cir. 1977). The Court entered default against Defendant on April 26, 2022.

Here, based on the factual allegations in the Complaint, Plaintiff sets out meritorious substantive claims. These include breaches of the Covenant of Quiet Enjoyment and the Implied Warranty of Habitability. Defendant shut off Plaintiff's utilities for failures to make payments at an unlawfully inflated rate. The facts set out further claims for Unjust Enrichment and violation of the Consumer Protection Act. Finally, Plaintiff's severe distress, during the height of the COVID-19 pandemic, supports a claim for Intentional Infliction of Emotional Distress.

Plaintiff's substantive claims are meritorious and arise from the well-pleaded facts of the Complaint. Therefore, the crucial second *Eitel* factor weighs in favor of granting Plaintiff's Motion for Default Judgment.

iii. *Sufficiency of Complaint*

The third *Eitel* factor requires the Court to consider the procedural sufficiency of Plaintiff's Complaint. The Complaint lays out legal causes of action arising from well-pleaded factual allegations. Plaintiff even amended her Complaint to remove irrelevant facts and causes of action after she vacated the lease premises. *See* Ord. to Allow Amended Pleading (Apr. 7, 2021). The

Court recognized the procedural sufficiency of this Amended Complaint when it entered default against Defendant. *See* Entry of Default (Apr. 26, 2022). Therefore, the third *Eitel* factor weighs in favor of granting Plaintiff's Motion for Default Judgment.

iv. *Sum of Money at Stake vs. Severity of Defendant's Conduct*

Plaintiff argued for thirteen thousand five hundred thirty-three dollars and twenty cents ($13,533.20) in total damages. *See* M. Default Judgment at 11 (Jun. 24, 2024). The Court will not grant this amount in its entirety. However, even the damage award argued by Plaintiff is not impermissibly incongruous with Defendant's conduct. Defendant shut off Plaintiff's utilities for thirty-four (34) total days, twenty-nine (29) during the COVID-19 pandemic, based on failure to pay utilities at an unlawfully inflated rate. *See id*., at 10-11. This conduct was egregious and resulted in significant hardship for Plaintiff. Punitive damages and damages for pain and suffering are justified in this matter.

The amount of money at issue in this case is not out of proportion with Defendant's conduct. Plaintiff claimed that were "this matter to have gone to jury trial on the damages issues, Plaintiff anticipates a jury is likely to award . . . damages in this matter in an amount closer to [fifty thousand dollars] $50,000." *See* Reply to D.'s Opp. to Default Judgment at 6 (Nov. 8, 2024). The Court will not speculate as to the conclusions a hypothetical jury might draw. However, Plaintiff's damage calculations are supported by persuasive precedent in other jurisdictions. *See* M. Default Judgment at 8-10 (Jun. 24, 2024). Plaintiff calculated damages based on facts pled in the Complaint, and did not attempt to inflate damages to an unreasonable degree. *See id*. Compared to Defendant's disregard for Plaintiff's safety and well-being in early 2020, the sum of money at stake matches the severity of Defendant's conduct. The fourth *Eitel* factor weighs in Plaintiff's favor.

v. *Possibility of Dispute Concerning Material Facts*

Upon entry of default, the Court is to take factual allegations in the complaint as true. *See Geddes*, 559 F.2d at 560. The Court entered default on April 26, 2022. It declined to set aside the default on September 24, 2024. Defendant had ample warning that it needed to retain counsel to litigate this matter. *See Chen's Corp.*, 2007 MP 04 ¶ 8. Defendant repeatedly failed to do so. *See* Entry of Default (Apr. 26, 2022); *see also* Ord. Denying D.'s M. to Set Aside . . . at 6 (Sep. 24, 2024).

Failure to properly appear suggests there is no genuine issue of material fact. *See Elektra Ent. Grp. Inc. v. Crawford*, 226 F.R.D. 388, 393 (C.D. Cal. 2005) ("Because all allegations in a well-pleaded complaint are taken as true after the court clerk enters default . . . there is no likelihood that any genuine issue of material fact exists"). While Defendant might dispute material facts in the Complaint, Defendant's repeated failure to do so, and the Court's obligation to read the facts in the Complaint as true, cause the fifth *Eitel* factor to weigh in Plaintiff's favor. *See Geddes*, 559 F.2d at 560.

vi. *Whether Default was Due to Excusable Neglect*

The Court determined that the default was not due to excusable neglect when it declined to set aside the entry of default on September 24, 2024. *See* Ord. Denying D.'s M. to Set Aside . . . at 6 (Sep. 24, 2024). Therefore, the sixth *Eitel* factor weighs in Plaintiff's favor.

vii. *Strong Public Policy Interest in Deciding Cases on the Merits*

The final *Eitel* factor calls on the Court to consider the public policy interest in deciding cases on their merits. This factor weighs in Defendant's favor. If the Court grants Plaintiff's Motion for Default Judgment, this matter will not be decided by a trial on the merits.

/// /// /// /// /// /// ///

viii. *Conclusion*

While the Court notes that default judgment is generally disfavored, the existence of Civil Procedure Rule 55 proves that the seventh *Eitel* factor is not dispositive. *See* NMI R. CIV. P. 55. If the public policy interest in deciding cases on their merits outweighed the other default judgment factors, courts would never grant motions for default judgment. Rule 55 would, in such a case, be irrelevant and inoperative. The Court will not read precedent to invalidate entire rules of Civil Procedure.

Therefore, all but one *Eitel* factor weighs in favor of granting Plaintiff's Motion for Default Judgment. The single factor weighing in Defendant's favor is not dispositive. Therefore, the Court now **GRANTS** Plaintiff's Motion for Default Judgment. It will now apply the factual allegations of the Complaint to Plaintiff's causes of action. The Court will then determine damages.

B. Causes of Action

Upon entry of default, the Court is to take factual allegations in the complaint as true. *See Geddes*, 559 F.2d at 560. Therefore, the Court will apply the facts in the Complaint to each of Plaintiff's six (6) causes of action.

i. *Breach of the Covenant of Quiet Enjoyment and Possession*

"A principal covenant on the part of a landlord . . . is that his tenant shall have the quiet enjoyment and possession of the premises." *See Manglona v. Gov't of the Commonwealth of the N. Mariana Islands*, 2005 MP 15 ¶ 30. Breach "occurs through intentional conduct by the landlord which renders the lease unavailing to the tenant or deprives [her] of the beneficial enjoyment of the leased property." *See id.*

Here, Defendant intentionally shut off Plaintiff's utilities. This deprived Plaintiff of her ability to enjoy the leased property. Difficulties arising from the shut-offs included lack of light, electricity for Plaintiff's daughter's asthma nebulizer, and water to flush toilets. *See* Amended

Complaint at 3 ¶ 12 (Apr. 6, 2021). These difficulties prevented Plaintiff from enjoying possession of the lease premises. Plaintiff may recover compensatory damages for this cause of action.

ii. *Breach of Implied Warranty of Habitability*

"The elements of a cause of action for breach of the implied warranty of habitability 'are the existence of a material . . . condition affecting the premises' habitability, notice to the landlord of the condition within a reasonable time after the tenant's discovery of the condition, [that] the landlord was given a reasonable time to correct the deficiency, and resulting damages.'" *See Peviani v. Arbors at California Oaks Property Owner, LLC*, 277 Cal. Rptr. 3d 223, 236 (Ct. App. 2021) (*quoting Erlach v. Sierra Asset Servicing, LLC*, 173 Cal. Rptr. 3d 159 (Ct. App. 2014)).

Here, both utilities shut-offs significantly impacted Plaintiff's apartment's habitability. Defendant had notice of the condition of Plaintiff's apartment, as Defendant purposefully shut off the utilities. Defendant had almost a month to correct the condition in May – June 2020. Plaintiff experienced damages in the form of spoiled food, extra transportation costs, and pain and suffering. Therefore, the Complaint satisfies the elements of a breach of the implied warranty of habitability claim. The breach in this cause of action is particularly egregious, as it was not a result of a defective condition outside Defendant's knowledge. Defendant purposefully shut off Plaintiff's utilities to recoup a fee not authorized in the lease agreement or by law. This further supports an award of punitive damages.

iii. *Breach of Contract – Overcharging on Utilities*

"The elements of a breach of contract action are (1) the existence and terms of a contract; (2) that plaintiff performed or tendered performance pursuant to the contract; (3) breach of the contract by the defendant; and (4) damages suffered by the plaintiff." *See Goldsmith v. Lee Enters.*, 57 F.4th 608, 612 (8th Cir. 2023).

Here, Plaintiff and Defendant entered into a lease agreement via valid contract. Plaintiff made rent and utilities payments as provided by the lease agreement. Defendant overcharged Plaintiff for utilities. Defendant shut off Plaintiff's utilities for failure to make an unauthorized late fee payment. However, the lease "is silent as to the rate to be charged or the amount to be charged for electricity." *See* M. Default Judgment at 5 (Jun. 24, 2024); *see also* Ex. 1 – Lease (Jun. 24, 2024). While it is true that "Commonwealth law requires that . . . electric power shall not be resold by a customer to a third party [i.e. at a rate higher than the prescribed residential rate]," this violation cannot be said to be a breach of a contract that is silent on the issue. *See* M. Default Judgment at 5 (Jun. 24, 2024). Therefore, Plaintiff should not recover for breach of contract.

iv. *Unjust Enrichment – Overcharging on Utilities*

"To prove a claim for unjust enrichment, a claimant must show: (1) the defendant was enriched; (2) the enrichment came at the plaintiff's expense; and (3) equity and good conscience militate against permitting the defendant to retain what the plaintiff seeks to recover." *See Syed v. Mobil Oil Mariana Islands, Inc.*, 2012 MP 20 ¶ 41.

Here, Defendant charged Plaintiff utilities at a rate greater than the Commonwealth Utilities Corporation ("CUC") residential rate. *See* Ex. 2 – Utility Receipts (Jun. 24, 2024); *see also* Ex. 3 – CUC Rates (Jun. 24, 2024); *see also* Ex. 4 – Utility Overpayment Calculations (Jun. 24, 2024). This enriched Defendant by "an amount of seventy-three dollars and sixty cents ($73.60) from the beginning of the lease agreement until April 30, 2020." *See* Amended Complaint at 5 ¶ 31 (Apr. 6, 2021). The enrichment came at Plaintiff's expense, as Defendant shut off Plaintiff's utilities for her failure to pay the amount of the overcharge. Equity and good conscience militate that Defendant not be allowed to maintain the seventy-three dollars and sixty cents ($73.60) gained by way of an unlawful overcharge. Therefore, Plaintiff is entitled to recover on this cause of action.

v. *Consumer Protection Act Violation – Overcharging on Utilities*

The CNMI Consumer Protection Act holds that "engaging in any act or practice which is unfair or deceptive to the consumer" is unlawful. *See* 4 CMC § 5105. For willful Consumer Protection Act violations, "the court shall award liquidated damages in an amount equal to the actual damages." *See* 4 CMC § 5112.

Here, Defendant charged Plaintiff for utilities at a rate higher than the CUC residential rate. This was "unfair or deceptive to [Plaintiff]," the consumer of these services. Defendant sub-metered Plaintiff's utilities from CUC. *See* Amended Complaint at 2 ¶ 6 (April 6, 2021). Therefore, Defendant knew the CUC rate and willfully overcharged Plaintiff. Such a willful violation of the Consumer Protection Act shall result in "liquidated damages in an amount equal to the actual damages." *See* 4 CMC § 5112. As the facts of this case satisfy the Consumer Protection Act's scheme for violations, Plaintiff is entitled to recover on this cause of action.

vi. *Intentional Infliction of Emotional Distress*

A cause of action for "intentional infliction of emotional distress requires proof of four elements: (1) that the conduct complained of was outrageous; (2) that the conduct was intentional or reckless; (3) it must cause emotional distress; and (4) the distress must be severe." *See Charfauros v. Bd. of Elections*, 1998 MP 16 ¶ 62.

Here, Defendant's conduct was outrageous. Plaintiff "had her power and water cut off [when] she was not delinquent at all on her payments to [Defendant]." *See* M. Default Judgment at 10 (Jun. 24, 2024). The shut-offs were instead based on failure to pay for utilities at an unlawfully inflated rate. Defendant intentionally shut off Plaintiff's electricity and water and refused to reactivate them. Plaintiff experienced severe distress because of Defendant's conduct. This included "feelings of stress . . . contributing to weight loss and lack of sleep," distress "augmented by . . .

[the] significant stress and hardship" on Plaintiff's minor children. *See* Amended Complaint at 6-7 ¶ 47 (Apr. 6, 2021).

This stress and hardship included inability to use Plaintiff's daughter's asthma nebulizer, the apartment's lights, and the toilet. All of this occurred during the COVID-19 pandemic when all non-essential workers were ordered to stay home. The Court finds, in light of the pandemic and the thirty-four (34) total days of unauthorized utilities shut-off, that Plaintiff's emotional distress was severe. Therefore, Plaintiff may recover for this cause of action.

C. Damages

Plaintiff calculated combined damages for all six (6) causes of action, detailed in the Complaint. *See* Amended Complaint at 6-7 (Apr. 6, 2021). To avoid granting duplicate damage awards, the Court will likewise amalgamate Plaintiff's causes of action for damages calculation. *See, e.g.*, M. Default Judgment at 11 (Jun. 24, 2024) ("[Plaintiff] acknowledges she cannot receive double recovery for her differing causes of action").

Upon entry of default, the Court is to take factual allegations in the complaint as true. *See Geddes*, 559 F.2d at 560. Therefore, the Court takes Plaintiff's calculations of her damages for "food spoilage" and "extra costs . . . and additional transportation costs" as accurate. *See* Amended Complaint at 3-4 ¶¶ 14-26 (Apr. 6, 2021). Food spoilage cost Plaintiff eight hundred dollars (**$800**). Plaintiff calculated "extra costs" at one hundred eighty-six dollars (**$186**).

Plaintiff looked to persuasive precedent and California statute to calculate damages for pain and suffering at one hundred dollars ($100) per day for thirty-four (34) days, for a total of three thousand four hundred dollars ($3,400). The Court finds that Plaintiff's significant hardship as a result of Defendant's conduct supports an award of damages for pain and suffering. However, neither Vermont Superior Court opinions nor California statutes are binding on this Court. The Court finds that both support a smaller per-day award for pain and suffering damages.

The Rutland County, Vermont, Superior Court granted a plaintiff one hundred dollars ($100) per day of interrupted utilities for pain and suffering. *See McCord v. Asante*, 2012 Vt. Super LEXIS 17 at *10 (Vt. Super. Ct. 2012). California statute holds that a landlord who engages in an unauthorized shut-off of a tenant's utilities is liable for an amount *not to exceed* one hundred dollars ($100) per day (emphasis added). *See* Cal. Civ. Code § 789.3(c).

In *McCord*, the Rutland County Superior Court emphasized that the defendant's conduct was so culpable due to the season in which it occurred. *See McCord*, 2012 Vt. Super LEXIS 17 at *10. The court took "into account that the discomfort, inconvenience, and humility is significant in the middle of winter, and use[d] as a very rough measure of damages an amount in the range of what it might have cost the Tenant to pay per day or week for a motel or other substitute accommodation." *See id*.

While the first utility shut-off in this matter occurred in early March, Saipan experiences milder winters than Vermont. Furthermore, Plaintiff stated that she did not seek alternative living accommodations during the shut-offs, instead remaining in her residence. *See* Dec. in Support of M. Default Judgment at 4-5 ¶ 10(c) (Jun. 24, 2024). Finally, the one hundred dollar ($100) per-day pain and suffering award for improper utility shut-offs in California is a maximum, not a standard. *See* Cal. Civ. Code § 789.3(c) (a landlord who engages in an unauthorized shut-off of a tenant's utilities is liable for an amount *not to exceed* one hundred dollars [$100] per day [emphasis added]). Therefore, the Court finds a one hundred dollar ($100) per day award for pain and suffering excessive in the instant matter.

Still, the Court recognizes that Plaintiff suffered significant hardship. She had difficulty sleeping and could not operate an electronic nebulizer machine to alleviate her daughter's asthma. *See* Dec. in Support of M. Default Judgment at 4-5 ¶ 10(c) (Jun. 24, 2024). Often, "the water [Plaintiff] gathered during the day ran out at night, making [her] unable to flush the toilet. [Plaintiff]

and [her] children had to live with the smells and poor hygiene this caused." *See id*. The "significant stress from being deprived of basic utilities . . . lead to [Plaintiff] losing weight." *See id*.

While these facts do not support a pain and suffering award of one hundred dollars ($100) per day, they do describe pain and suffering for which Defendant should duly compensate Plaintiff. The Court now finds that fifty dollars (**$50**) **per day** for thirty-four (34) days is sufficient to accommodate Plaintiff's pain and suffering. This calculation results in an award of one thousand seven hundred dollars (**$1,700**).

Therefore, Plaintiff's total compensatory damages, combining "food spoilage" of eight hundred dollars ($800), "extra costs" of one hundred eighty-six dollars ($186), and pain and suffering damages of one thousand seven hundred dollars ($1,700), is to be two thousand six hundred eighty-six dollars (**$2,686**).

Moreover, the Court agrees with Plaintiff that Defendant's "conduct in this case was egregious making an award of punitive damages appropriate." *See* M. Default Judgment at 10 (Jun. 24, 2024). Courts award punitive damages for particularly egregious breaches of the implied warranty of habitability. *See Morris v. Flaig,* 511 F.Supp.2d 282, 296-97 (E.D.N.Y. 2007). Punitive damages are available in landlord-tenant intentional infliction of emotional distress claims. *See Stoiber v. Honeychuck*, 162 Cal. Rptr. 194, 202 (Ct. App. 1980).

Defendant shut off Plaintiff's lights, air-conditioning, and running water based on failures to fully pay unlawfully inflated utility bills. These shut-offs occurred during the confused and frightening initial months of the COVID-19 pandemic. "At a time when emergency directive required all nonessential workers to stay home, Plaintiff's home had no lights or running water." *See* Ord. Denying D.'s M. Set Aside Entry of Default . . . at 7 (Sep. 24, 2024).

A trial judge has discretion whether or not to award punitive damages. *See Bouman v. Block*, 940 F.2d 1211, 1234 (9th Cir. 1991). Punitive damages are awarded to dissuade particularly egregious conduct. Here, the Court finds that Defendant's conduct exhibited callous disregard for Plaintiff's safety and well-being. Defendant endangered Plaintiff because she would not pay an unlawfully upcharged utility bill. This is exactly the type of willful conduct for which courts award punitive damages. Plaintiff's suggestion of setting punitive damages at twice the award of compensatory damages is reasonable. *See* M. Default Judgment at 10 (Jun. 24, 2024). Therefore, the Court awards punitive damages in the amount of five thousand three hundred seventy-two dollars (**$5,372**).

Finally, Plaintiff is entitled to recover the amount of the unlawful utilities overcharge, seventy-three dollars and sixty cents ($73.60). For willful Consumer Protection Act violations, "the court shall award liquidated damages in an amount equal to the actual damages." *See* 4 CMC § 5112. Therefore, the Court adds liquidated damages of an additional seventy-three dollars and sixty cents ($73.60). However, Plaintiff is not entitled to recover separate damage awards for each of her two (2) recoverable utilities overcharge causes of action. *See, e.g.,* M. Default Judgment at 11 (Jun. 24, 2024). Therefore, Plaintiff's total damages for the utilities overcharge shall be the amount of the overcharge plus equivalent liquidated damages, the total equaling one hundred forty-seven dollars and twenty cents (**$147.20**).

Plaintiff's damage award for five (5) recoverable causes of action shall be two thousand six hundred eighty-six dollars ($2,686) for compensatory damages, plus five thousand three hundred seventy-two dollars ($5,372) in punitive damages, plus one hundred forty-seven dollars and twenty cents ($147.20) for the unlawful utilities overcharge. Altogether, Defendant is liable to Plaintiff for eight thousand two hundred and five dollars and twenty cents (**$8,205.20**).

V. CONCLUSION

The Court now **GRANTS** Plaintiff's Motion for Default Judgment. The Court **FINDS** Defendant liable to Plaintiff for two thousand six hundred eighty-six dollars (**$2,686**) in compensatory damages, five thousand three hundred seventy-two dollars (**$5,372**) in punitive damages, and one hundred forty-seven dollars and twenty cents (**$147.20**) for utility overcharges in violation of the Consumer Protection Act.

Therefore, for the reasons stated above, the Court enters judgment in favor of Plaintiff in the amount of eight thousand two hundred and five dollars and twenty cents (**$8,205.20**).

SO ORDERED on this **10th** day of January 2025.

TERESA K. KIM-TENORIO
Associate Judge