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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 INCEPTION GROUP REAL ESTATE LLC, a
Washington limited liability company,

9 Plaintiff,

10 v.

11 AMIGA INC., a Delaware corporation formerly
12 known as KMOS Inc.,

13 Defendant.
14

CASE NO. C09-0810-JCC

ORDER

15 This matter comes before the Court on Plaintiff's Motion for Default Judgment (Dkt. No. 6). The
16 Court has carefully considered the motion and the balance of relevant materials in the case file, and has
17 determined that oral argument is not necessary. The Court hereby finds and rules as follows.

18 **I. BACKGROUND & FACTS**

19 In this diversity action, Plaintiff alleges the following. In November 2003, the King County
20 Superior Court awarded Plaintiff a judgment against Amino, Inc., in the amount of \$147,476.87, plus
21 interest at the statutory rate. (Compl. ¶ 5 (Dkt. No. 1 at 2).) In November 2008, Plaintiff entered a
22 written agreement with Amino, Inc., and Defendant Amiga, Inc., in which Plaintiff agreed to accept
23 \$150,000 as full satisfaction of the judgment, so long as Plaintiff received that amount within ninety
24 days of the effective date of the agreement. (Agreement Regarding Payment of Judgment ¶ 1 (Dkt. No. 1
25

1 at 5).) In addition, Defendant Amiga, Inc., promised that it “unconditionally guarantee[d] payment of
2 \$150,0000 [sic] of the Judgment.” (*Id.* ¶ 5.) The contract provided that in the event of any action to
3 enforce it, “the substantially prevailing party shall recover all costs and expenses thereof, including
4 reasonable attorney’s fees from the losing party.” (*Id.* ¶ 8.)

5 According to the Complaint, Amino, Inc., has not paid any portion of the judgment to date.
6 (Comp. ¶ 9 (Dkt. No. 1 at 2).) Nor has Defendant Amiga, Inc., paid any portion of the \$150,000 amount
7 of the judgment that it guaranteed. (*Id.* ¶ 10.) Plaintiff initiated this action on June 12, 2009, seeking to
8 collect damages from Defendant Amiga, Inc., for breach of contract in the amount of \$150,000. (*Id.* ¶
9 11.) In addition, Plaintiff sought prejudgment interest at the statutory rate of 12% from February 17,
10 2009. (*Id.*) Plaintiff also sought the sum of \$10,000 in a reasonable attorney’s fee. (*Id.* ¶ 12.) Defendant
11 did not timely appear in the action, and on July 13, 2009, the Clerk of Court entered an order of default.
12 (Dkt. No. 9.)

13 In the instant motion for default judgment, Plaintiff requests that the Court enter a default
14 judgment in the amount of \$167,052.05, consisting of the principal amount of the guaranty of \$150,000;
15 prejudgment interest in the amount of \$7,052.05; and an attorneys’ fee of \$10,000, “in the event this
16 action is contested.” (Mot. 1–2 (Dkt. No. 6).) The Court will address each of these requests, below.

17 **II. DISCUSSION**

18 **A. Default Judgments**

19 The decision whether to enter a default judgment pursuant to Federal Rule of Civil Procedure
20 55(b)(2) rests within the Court’s discretion. *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986). “The
21 general rule of law is that upon default the factual allegations of the complaint, except those relating to
22 the amount of damages, will be taken as true.” *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917–18
23 (9th Cir. 1987) (*quoting Geddes v. United Fin. Group*, 559 F.2d 557, 560 (9th Cir. 1977)).

24 **B. The Guaranty of \$150,000**

25 The signed agreement expressly states that Defendant unconditionally guaranteed payment of

1 \$150,000 of the judgment. (Agreement ¶ 5 (Dkt. No. 1 at 5).) Therefore, the Court finds that Plaintiff is
2 entitled to a default judgment in the amount of \$150,000.

3 **C. Prejudgment Interest**

4 Plaintiff argues that it is entitled to \$7,052.05 in prejudgment interest, incurred from February
5 17, 2009, to July 10, 2009, at the statutory rate of 12% per annum. (Mot. ¶ 3 (Dkt. No. 6); Compl. ¶ 11
6 (Dkt. No. 1).) “As a general rule, ‘[i]n diversity actions, state law determines the rate of prejudgment
7 interest[.]’” *Citicorp Real Estate, Inc. v. Smith*, 155 F.3d 1097, 1107 (9th Cir. 1998) (quoting *AT&T Co.*
8 *v. United Computer Sys., Inc.*, 98 F.3d 1206, 1209 (9th Cir. 1996)). Under Washington law,
9 “prejudgment interest is allowed in civil litigation at the statutory interest rate, RCW 4.56.110, RCW
10 19.52.020, when a party to the litigation retains funds rightfully belonging to another and the amount of
11 the funds at issue is liquidated, that is, the amount at issue can be calculated with precision and without
12 reliance on opinion or discretion.” *Crest Inc. v. Costco Wholesale Corp.*, 115 P.3d 349, 357 (Wash. Ct.
13 App. 2005) (quoting *Mahler v. Szucs*, 957 P.2d 632, 649 (Wash. 1998)). “The award of prejudgment
14 interest is based on the public policy that a person retaining money belonging to another should pay
15 interest in that sum to compensate for the loss of the money’s ‘use value.’” *Buckner, Inc. v. Berkey*
16 *Irrigation Supply*, 951 P.2d 338, 344 (Wash. Ct. App. 1998). Where “no different rate is agreed to in
17 writing between the parties,” the statutory rate of interest for every loan or forbearance of money shall
18 bear interest at the rate of twelve percent per annum. WASH. REV. CODE § 19.52.010(1). Additionally,
19 “[p]rejudgment interest accrues from the date the claim arose to the date of judgment.” *Seattle-First*
20 *Nat’l Bank v. Wash. Ins. Guar. Ass’n*, 972 P.2d 1282, 1291 (Wash. Ct. App. 1999).

21 The Court finds that the sum owed to Plaintiff was explicit in the agreement and therefore could
22 be calculated with precision and without reliance on opinion or discretion. The agreement did not
23 specify a different prejudgment interest rate than the statutory rate. Accordingly, the Court awards
24 Plaintiff prejudgment interest at the statutory rate of 12% per annum on the principal amount of
25 \$150,000, accruing from the date the payment became due, February 17, 2009, until July 10, 2009, as

requested.

D. Attorneys' Fees

Plaintiff requests attorneys' fees in the amount of \$10,000, "in the event this action is contested." (Mot. ¶ 4 (Dkt. No. 6); Feinberg Decl. ¶ 6 (Dkt. No. 8 at 2).) The Court believes Plaintiff may have intended to request this amount in the event the action was *not* contested. (*See* Compl. ¶ 12 (Dkt. No. 1).) The agreement does provide that in the event of any action to enforce the agreement, "the substantially prevailing party shall recover all costs and expenses thereof, including reasonable attorney's fees from the losing party." (Agreement ¶ 8 (Dkt. No. 1 at 7).) Therefore, it would seem that Plaintiff is entitled to reasonable attorneys' fees. However, Plaintiff has submitted no documentation or breakdown whatsoever to support the amount it requests as reasonable attorneys' fees. Therefore, the Court has no basis upon which to award them and declines to do so at present under these circumstances. If the Court is correct that Plaintiff seeks attorneys' fees in its motion for a default judgment in the amount of \$10,000, Plaintiff is DIRECTED to file, within thirty days of the date of this Order, appropriate documentation to support its fee request so that the Court may review this request for reasonableness.

IV. CONCLUSION

For the foregoing reasons, the Court hereby GRANTS IN PART and DENIES IN PART Plaintiff's Motion for Default Judgment (Dkt. No. 6). The Court awards Plaintiff the following amounts:

| | | |
|-----|---------------------------------|--------------|
| (1) | Damages for breach of contract: | \$150,000.00 |
| (2) | Prejudgment interest: | \$ 7,052.05 |
| (3) | Attorneys' Fees | \$ 0 |
| | TOTAL: | \$157,052.05 |

The Court may revise this default judgment as to attorneys' fees, based upon further supplementation of

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1 the record by Plaintiff.

2 DATED this 27th day of July, 2009.

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7 John C. Coughenour
8 UNITED STATES DISTRICT JUDGE
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