JOSHUA D. HURWIT, IDAHO STATE BAR NO. 9527
UNITED STATES ATTORNEY
JAMES P. SCHAEFER, CALIFORNIA STATE BAR NO. 250417
ASSISTANT UNITED STATES ATTORNEY
DISTRICT OF IDAHO
1290 W. MYRTLE ST. SUITE 500
BOISE, ID 83702-7788
TELEPHONE: (208) 334-1211
Email: James.Schaefer@usdoj.gov

Attorneys for United State of America

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA, Plaintiff, v. IDAHO PIPELINE CORPORATION, Defendant.	Case No. 1:24-cv-00260-BLW **MOTION FOR DEFAULT JUDGMENT AGAINST DEFENDANT**

Pursuant to Federal Rule of Civil Procedure 55(b)(2), the United States of America (Plaintiff) respectfully moves this Court to enter a default judgment against Idaho Pipeline Corporation (Defendant) in the amount of $89,838.77. This amount is the total of the principal, interest, penalty, and administrative costs owed by Defendant as of September 4, 2024. *See* ECF No. 1 at ¶23. The United States also requests post-judgment interest at the applicable rate and costs against Defendant.

This motion is based on Plaintiff's Memorandum in Support of Motion for Default Judgment Against Defendant filed herewith, the previously submitted declaration[1] of Assistant United States Attorney James P. Schaefer, *see* ECF Nos. 4-1 through 4-3, the declaration of U.S. Department of the Treasury Financial Program Specialist Ashleigh Edmonds filed herewith, any further briefing or evidence submitted to the Court, and any oral argument before the Court.

Respectfully submitted this 8th day of January, 2025.

JOSHUA D. HURWITT
UNITED STATES ATTORNEY
By:

/s/ James P. Schaefer
James P. Schaefer
Assistant United States Attorney

[1] Pursuant to 28 U.S.C. § 1746, a declaration is sufficient when an affidavit is called for by law or rule, such as the affidavit required in Federal Rule of Civil Procedure 55.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 8, 2025, the foregoing **MOTION FOR DEFAULT JUDGMENT AGAINST DEFENDANT** was electronically filed with the Clerk of the Court using the CM/ECF system, which sent a Notice of Electronic Filing to the following person(s):

N/A

And, I hereby certify that the following listed non-registered CM/ECF participants were served by first class mail, postage prepaid:

Idaho Pipeline Corporation
1219 S East Ave, Ste 301
Sarasota, FL 34239-2356

Northwest Registered Agent, LLC
784 S Clearwater Loop, Ste B
Post Falls, ID 83854

/s/Duncan Brain
Duncan Brain
Legal Assistant

JOSHUA D. HURWIT, IDAHO STATE BAR NO. 9527
UNITED STATES ATTORNEY
JAMES P. SCHAEFER, CALIFORNIA STATE BAR NO. 250417
ASSISTANT UNITED STATES ATTORNEY
DISTRICT OF IDAHO
1290 W. MYRTLE ST. SUITE 500
BOISE, ID 83702-7788
TELEPHONE: (208) 334-1211
Email: James.Schaefer@usdoj.gov

Attorneys for United State of America

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA, Plaintiff, v. IDAHO PIPELINE CORPORATION, Defendant.	Case No. 1:24-cv-00260-BLW **MEMORANDUM IN SUPPORT OF MOTION FOR DEFAULT JUDGMENT AGAINST DEFENDANT**

The United States of America (United States) respectfully submits this memorandum in support of its motion for entry of a default judgment against Idaho Pipeline Corporation (Idaho Pipeline) pursuant to Federal Rule of Civil Procedure 55(b)(2).

I. BACKGROUND

The United States brought this action to collect a debt owed by Idaho Pipeline as a result of its violation of federal pipeline safety laws. *See* Compl., Dkt. 1, ¶¶ 8-13; Ex A. to Compl., Dkt. 1-1. Specifically, in August 2019, the Secretary of Transportation imposed a $49,000 civil penalty on Idaho Pipeline for failing to maintain current records of its pipeline system. Compl., Dkt. 1, ¶ 12; Ex A. to Compl., Dkt. 1-1. Thereafter, the government unsuccessfully attempted to collect from Idaho Pipeline by sending demand letters and by using private collection agencies. Compl., Dkt. 1, ¶¶ 14-15; Exs. B & C to Compl., Dkts. 1-2 & 1-3. Despite these efforts, Idaho Pipeline failed to make payment. Compl., Dkt. 1, ¶ 16. As a result, the United States filed this case on May 29, 2024. The United States alleged in its Complaint that as of July 27, 2023, Idaho Pipeline was indebted to it in the following amount:

> Principal: $ 49,000.00
> Interest @1.00% $ 1,918.74
> Penalty @6.00% $ 12,253.58
> <u>Administrative Costs: $ 22,859.45</u>
> **Total: $ 86,031.771**

Compl., Dkt. 1, ¶ 19; Ex. C to Compl., Dkt. 1-3.

The government served its complaint on Idaho Pipeline on July 16, 2024, *see* Dkt. 4-1, ¶ 5; Dkt. 4-3. which means a response was due by August 6, 2024. *See* Fed. R. Civ. P. 12(1)(A)(i). Idaho Pipeline failed to respond to the Complaint.

On September 4, 2024, the United States filed an Application for Entry of Default and Default Judgment, asking the Clerk of the Court to: (1) enter Idaho Pipeline's default under Federal Rule of Civil Procedure 55(a); and (2) enter a default judgment under Federal Rule of Civil Procedure 55(b)(1) against Idaho Pipeline in the amount of $89,838.77, which is comprised of: (a) the principal amount of $49,000 plus interest of $2,465.49 that accrued through September 4, 2024, at a rate of 1.0% annually or $1.35 per diem; (b) a penalty of $15,513.83 that accrued through September 4, 2024, at a rate of 6.0% annually or $8.05 per diem; and (c) administrative cost of $22,859.45. *See* Dkt. 4, at p.2; Dkt. 4-1, ¶ 8.

The Clerk entered Idaho Pipeline's default. *See* Dkt. 5. However, the Court denied without prejudice the United States' application for entry of a default judgment. *See* Dkt. 6. The Court explained:

> [M]ost aspects of the government's claim are for a "sum certain." Beginning with the $49,000 penalty, the government's effort to recover that amount is similar to an effort to recover a money judgment. The associated charges for interest and late fees are matters of arithmetic. The only problem is the reported $22,859.45 administrative cost . . . there is nothing documenting the reported administrative cost or showing how the figure was calculated.

Id. at p.4. In denying a default judgment, the Court provided that "the government is free to renew its request so long as the claimed administrative cost is properly documented." *Id.* at p.5.

The United States now renews its request for entry of a default judgment, including the claimed $22,859.45 administrative cost. In support of this renewed request, the United States is submitting herewith a declaration from U.S. Department of the Treasury Financial Program Specialist Ashleigh Edmonds (Edmonds Decl.).

Ms. Edmonds' declaration identifies and explains: (1) the statutes and regulations authorizing the collection of costs, *see* Edmonds Decl., ¶¶ 4-6; (2) how the U.S. Department of the Treasury's Bureau of the Fiscal Service set the 32% collection fee applied to debts that are over two years old, *id.*, ¶¶ 7-13; (3) the Department of Justice (DOJ) 3% fee, *id.*, ¶¶ 12, 14.c, and (4) how the $22,859.45 administrative cost was calculated as to Idaho Pipeline's debt, *id.*, ¶ 14. Specifically, as to the calculation of the $22,859.45 administrative cost, Ms. Edmonds explains:

> As of July 27, 2023, the total amount owed on the Certificate of Indebtedness is $86,031.77. This is broken down as follows: $49,000.00 principal, $1,918.74 interest, $12,253.58 penalty, and $22,859.45 administrative costs. The administrative costs are comprised of the creditor agency administrative fee of $48.00, the potential [Department of the Treasury's Bureau of the Fiscal Service's Disbursing and Debt Management (DDM)] collection fee of $20,230.50, and the potential [Department of Justice (DOJ)] collection fee of $2,580.95. These are determined as follows:
>
> a. The creditor agency administrative fee is $48.00. This amount was included in the initial referred balance to DDM by the creditor agency.
>
> b. The potential DDM collection fee is $20,230.50. This is calculated by multiplying the adjusted balance by the 32% DDM collection fee . . .. The adjusted balance is the sum of the principal, interest, penalty, & creditor agency administrative fee. In this case, that looks as follows:

i. $49,000 principal + $1,918.74 interest + $12,253.58 penalty + $48 creditor agency administrative fee = $63,220.32 adjusted balance.

ii. $63,220.32 adjusted balance x 32% = $20,230.50 DDM fee

c. The potential DOJ fee is $2,580.95. This is calculated by adding the adjusted balance and DDM fee, dividing that total by 97%, and then multiplying that total by 3% . . .. In this case, that looks as follows:

i. ($63,220.32 adjusted balance + $20,230.50 DDM fee) / 97% = $86,031.77 total amount owed.

ii. $86,031.77 total amount owed x 3% = $2,580.95 DOJ fee.

Id., ¶ 14.

Between the calculation of the $22,859.45 administrative cost on July 27, 2023, and the United States' Application for Entry of Default and Default Judgment on September 4, 2024, Idaho Pipeline's debt continued to accrue interest at a rate of 1.0% annually or $1.35 per diem and a penalty at a rate of 6.0% annually or $8.05 per diem such that Idaho Pipeline's total debt on September 4, 2024, was $89,838.77. *See* Dkt. 4-1, ¶ 8.

II. LEGAL STANDARDS

Where, as here, default has been entered, the factual allegation in the complaint are taken as true, *see Fair Housing of Marin v. Combs*, 285 F.3d 899, 906 (9th Cir. 2002), and the Court has discretion to enter a default judgment, *see Lou Ah Yew v. Dulles*, 236 F.2d 415 (9th Cir. 1956). In *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986), the Ninth Circuit identified seven factors that districts court may consider in exercising their discretion to enter a default judgment:

> (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 1471-72. "In applying this discretionary standard, default judgments are more often granted than denied." *PepsiCo, Inc. v. Triunfo-Mex, Inc.*, 189 F.R.D. 431, 432 (C.D. Cal. 1999). The plaintiff, however, must establish the relief to which it is entitled. *See Pope v. United States*, 323 U.S. 1 (1944); *Fair Housing of Marin*, 285 F.3d at 906.

III. ARGUMENT

A. First Factor: Prejudice to the United States

The debt owed by Idaho Pipeline stems from its violation of pipeline safety regulations. If this debt is not reduced to a judgment, the United States would be prejudiced in a least two ways. First, the government's ability to collect on a valid, outstanding debt would be constrained. Second, the enforcement of the pipeline safety regulations underlying that debt would be undermined. Accordingly, the prejudice factor weighs in favor of entering a default judgment against Idaho Pipeline.

B. Second and Third Factors: Merits of the United States' Claim and Sufficiency of the Complaint

These two *Eitel* factors "require that a plaintiff state a claim on which the [plaintiff] may recover." *PepsiCo, Inc. v. California Sec. Cans*, 238 F. Supp. 2d 1172, 1175 (CD. Cal. 2002) (internal citation omitted). Here, the United States has adequately pleaded a debt collection claim and can establish the merits of that claim. Moreover, because the Clerk of Court has entered default against Idaho Pipeline, *see* Dkt. 5, the factual allegations in the United States' Complaint must be taken as true. *See Fair Housing of Marin*, 285 F.3d at 906. Those allegations establish that: (1) Idaho Pipeline violated pipeline safety regulations; (2) as a result, the Secretary of Transportation imposed a $49,000 civil penalty on Idaho Pipeline; (3) Idaho Pipeline failed to pay that civil penalty, and (4) the government's pre-litigation collection efforts were unsuccessful. Dkt. 1, ¶¶ 8, 12, 14-16. Accordingly, both of the merits of the United States' claim and the sufficiency of its Complaint weigh heavily in favor of entering the default judgment.

C. Fourth Factor: The Sum of Money at Stake

The United States seeks $89,838.77, which is comprised of: (a) the principal amount of $49,000 plus interest of $2,465.49 that accrued through September 4, 2024, at a rate of 1.0% annually or $1.35 per diem; (b) a penalty of $15,513.83 that accrued through September 4, 2024, at a rate of 6.0% annually or $8.05 per diem; and (c) administrative cost of $22,859.45. The relatively small amount of this claim weighs in favor of entering a default judgment.

D. Fifth Factor: Possibility of Dispute Concerning Material Facts

This factor addresses the possibility of a dispute regarding the material facts of the case. Upon entry of default the well-pleaded allegations of the complaint are taken as true. *Fair Housing of Marin*, 285 F.3d at 906. Where, as here, sufficient facts have been alleged in the complaint as to the non-answering defendant, no dispute exists as to the material facts as a matter of law. *See Elektra Ent. Group, Inc. v. Crawford*, 226 F.R.D. 388, 393 (C.D. Cal. 2005) (once default is entered, "there is no likelihood that any genuine issue of material fact exists"); s*ee also Twentieth Century Fox Film Corp. v. Streeter*, 438 F. Supp. 2d 1065, 1071 (D. Ariz. 2006) (holding "there is little possibility of dispute concerning material facts because (1) based on the entry of default, the Court accepts all allegations in [the Complaint] as true ... and (2) [the defendant] has not made any attempt to challenge [the Complaint] or even appear"). Thus, this factor weighs in favor of entering default judgment.

E. Sixth Factor: Excusable Neglect

The Summons and Complaint were properly served on Idaho Pipeline on July 16, 2024. In addition, the United States Application for Entry of a Default Judgment was served on Idaho

Pipeline on September 4, 2024. Nevertheless, Idaho Pipeline has not appeared in this case or offered any explanation for its failure to do so.

F. Seventh Factor: The Policy Favoring Decisions on the Merits

Although public policy favors the resolution of a case on its merits, "this preference, standing alone, is not dispositive," *PepsiCo*, 238 F. Supp. 2d at 1177, and default judgment is appropriate where the defendant's failure to answer the complaint "makes a decision on the merits impractical, if not impossible," *Id.* at 1177. As noted above, Idaho Pipeline has failed to answer the complaint in this case despite having been properly served and given notice of this action. Thus, resolution of the case on its merits is not likely, and default judgment is appropriate.

As demonstrated above, all of the factors set forth in *Eitel* weigh in favor of granting a default judgment against the defendants.

IV. CONCLUSION

For the foregoing reasons, the United States respectfully requests that the Court enter a default judgment in favor of the United States and against Defendant Idaho Pipeline Corporation in the amount of $89,838.77 plus post judgment interest and costs.

Respectfully submitted this 8th day of January, 2025.

JOSHUA D. HURWITT
UNITED STATES ATTORNEY
By:

/s/ James P. Schaefer
James P. Schaefer
Assistant United States Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 8, 2025, the foregoing **MEMORANDUM IN SUPPORT OF MOTION FOR DEFAULT JUDGMENT AGAINST DEFENDANT** was electronically filed with the Clerk of the Court using the CM/ECF system, which sent a Notice of Electronic Filing to the following person(s):

N/A

And, I hereby certify that the following listed non-registered CM/ECF participants were served by first class mail, postage prepaid:

Idaho Pipeline Corporation
1219 S East Ave, Ste 301
Sarasota, FL 34239-2356

Northwest Registered Agent, LLC
784 S Clearwater Loop, Ste B
Post Falls, ID 83854

/s/Duncan Brain
Duncan Brain
Legal Assistant

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA, Plaintiff, v. IDAHO PIPELINE CORPORATION, Defendant.	Case No. 1:24-cv-00260-BLW **DECLARATION OF ASHLEIGH EDMONDS**

1. I, Ashleigh Edmonds, make the following declaration in lieu of an affidavit as permitted by 28 U.S.C. § 1746.
2. This declaration is made based upon my personal knowledge, belief, and experience gained in the course of my employment with the U.S. Department of the Treasury's Bureau of the Fiscal Service (Fiscal Service). I am over 21 years of age and I am competent to give this declaration in all respects. I understand and intend for this declaration to be introduced as evidence in the above-captioned case.
3. I have been employed by the Fiscal Service's Disbursing and Debt Management (DDM) since 2012. My current title is Financial Program Specialist within the Litigation Policy & Management Branch, Debt Management Operations Division. Part of my regular duties and responsibilities include an annual analysis of DDM fees, for both the Treasury Offset Program and the Cross-Servicing Program.

Background

4. Pursuant to the Debt Collection Improvement Act of 1996, DDM provides centralized

delinquent debt collection activities for federal agencies. DDM accomplishes this through its Treasury Offset Program and its Cross-Servicing Program. Generally, federal agencies must refer nontax debts to these programs for collection by 120 days (or, in some cases, 180 days) of delinquency. 31 U.S.C. §§ 3711(g)(1)-(2), 3716(c)(6).

5. By law, DDM charges fees to recover costs associated with the debt collection services it provides to creditor agencies. 31 U.S.C. §§ 3711(g)(6), 3716(c)(4), 3720A(d); 31 C.F.R. §§ 285.2(h), 285.4(g), 285.7(j), 285.12(j), 901.9(c), (f). The purpose of these fees is to recover the direct and indirect costs of its debt collection programs. DDM does not make a profit from these fees.

6. Federal agencies collecting nontax debts generally must pass on all debt collection costs, including fees charged by DDM, to the debtor. 31 U.S.C. § 3717(e)(1); 31 C.F.R. § 901.1(c); *see also* 31 U.S.C. § 3711(g)(6).

Debt Collection Fees for the Cross-Servicing Program

7. DDM is attempting to collect the debt at issue in this case through its Cross-Servicing Program. In this program, DDM collects delinquent non-tax debts owed to federal agencies.

8. DDM incurs direct costs for a variety of functions in the Cross-Servicing Program. These functions include placing debt collection calls; sending debt collection letters; skip tracing debtor information; referring debts for offset of federal payments; referring debts to private collection contractors; reporting debts to credit bureaus; administratively garnishing wages; entering into repayment and compromise agreements; referring debts to the Department of Justice for litigation; processing debtor disputes; reporting forgiveness of indebtedness income to the Internal Revenue Service on Forms 1099C; resolving debts due to bankruptcy, death, or inability to pay; and assisting federal agencies in complying with their debt

collection obligations.

9. DDM also incurs indirect costs that are allocated to the Cross-Servicing Program. These indirect costs relate to information technology, legal services, facilities, and other overhead categories in the Fiscal Service.

10. DDM determined its FY 2025 debt collection fee for the Cross-Servicing Program in three basic steps:

    a. DDM calculated the amount of direct and indirect costs attributable to the Cross-Servicing Program in FY 2024. When an activity supported more than one debt collection program, DDM allocated the costs of that activity using a combination of cost drivers. These cost drivers reflect proxies for time spent by employees on each debt collection program (such as management estimates, time call center agents spent on calls for one program versus another, etc.). In addition, DDM allocated information technology costs based on specific systems used by each debt collection program.

    b. DDM estimated the Cross-Servicing Program collections expected in FY 2025 using historical data and trends.

    c. Using the calculations and estimates above, DDM determined the percentage of collections necessary to recover these costs.

    d. For FY 2025, these fees are 30% for any debts that are less than or equal to two years delinquent, starting from the date of delinquency provided by the creditor agency, and 32% for debts that are over two years delinquent. The difference in percentage reflects the average costs to collect a similarly-aged debt.

11. The fees DDM charges federal agencies for collections through the Cross-Servicing Program

are insufficient to cover the full cost of the program. That is, the Cross-Servicing fee does not recover all program costs. DDM uses fiscal and financial agents to support the Cross-Servicing Program and does not include the cost for these agents in its fee calculation.

12. DDM charges a fee only on amounts actually collected for the creditor agency. The fee does not change if DDM uses a private collection agency. However, the fee may increase if DDM collects the debt through the efforts of the Department of Justice (including the Department of Justice's private counsel). *See* Pub. L. No. 103–121, § 108, 107 Stat. 1164 (1993) ("[T]he Attorney General may credit, as an offsetting collection, to the Department of Justice Working Capital Fund, for fiscal year 1994 and thereafter, up to three percent of all amounts collected pursuant to civil debt collection litigation activities of the Department of Justice.").

13. DDM does not charge actual costs on a debt-by-debt basis because it has determined that charging actual costs: (1) would be administratively burdensome, (2) would substantially increase DDM's overhead costs (which would need to be recovered through fees charged to creditor agencies), and (3) could raise fairness issues (e.g., this could result in debtors being penalized for exercising legal rights that may require DDM to invest more time in on a particular account, whether by disputing a debt, submitting a request under the Freedom of Information Act, or negotiating a repayment agreement based on ability to pay).

Calculation of Administrative costs/fees for Idaho Pipeline Corporation

14. As of July 27, 2023, the total amount owed on the Certificate of Indebtedness is $86,031.77. This is broken down as follows: $49,000.00 principal, $1,918.74 interest, $12,253.58 penalty, and $22,859.45 administrative costs. The administrative costs are comprised of the creditor agency administrative fee of $48.00, the potential DDM collection fee of $20,230.50, and the potential DOJ collection fee of $2,580.95. These are determined as follows:

a. The creditor agency administrative fee is $48.00. This amount was included in the initial referred balance to DDM by the creditor agency.

b. The potential DDM collection fee is $20,230.50. This is calculated by multiplying the adjusted balance by the 32% DDM collection fee, as referenced in paragraph 10d above. The adjusted balance is the sum of the principal, interest, penalty, & creditor agency administrative fee. In this case, that looks as follows:

   i. $49,000 principal + $1,918.74 interest + $12,253.58 penalty + $48 creditor agency administrative fee = $63,220.32 adjusted balance.

   ii. $63,220.32 adjusted balance x 32% = $20,230.50 DDM fee

c. The potential DOJ fee is $2,580.95. This is calculated by adding the adjusted balance and DDM fee, dividing that total by 97%, and then multiplying that total by 3%, as referenced in paragraph 12 above. In this case, that looks as follows:

   i. ($63,220.32 adjusted balance + $20,230.50 DDM fee) / 97% = $86,031.77 total amount owed.

   ii. $86,031.77 total amount owed x 3% = $2,580.95 DOJ fee.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 4th day of December, 2024.

Ashleigh N. Edmonds

Digitally signed by Ashleigh N. Edmonds
Date: 2024.12.04 15:45:11 -06'00'

ASHLEIGH EDMONDS
Financial Program Specialist
Litigation Policy & Management Branch
Debt Management Operations Division
Disbursing and Debt Management
Bureau of the Fiscal Service
U.S. Department of the Treasury