

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

OPERATING ENGINEERS' HEALTH
AND WELFARE TRUST FUND FOR
NORTHERN CALIFORNIA, et al.,

No. 3:19-cv-02308-WHA

Plaintiffs,

v.

UNITED RSC GENERAL &
ENGINEERING, INC., a California
Corporation, et al.,

**ORDER GRANTING
PLAINTIFFS' MOTION FOR
ATTORNEY'S FEES AND COSTS**

Defendants.

INTRODUCTION

In this ERISA and Labor Management Retirements Act ("LMRA") action, plaintiffs move for attorney's fees and costs. For the reasons below, plaintiffs' motion is **GRANTED.**

STATEMENT

Plaintiffs are (1) Operating Engineers Local Union No. 3 of the International Union of Operating Engineers, AFL-CIO, (2) a related group of funds that constitute employee benefit plans under ERISA, and (3) the Heavy and Highway Committee, a trust established under the LMRA. Their complaint alleges that defendant Richard Ray Spaulding, acting on behalf of defendants RSC General & Engineering, Inc. and Reyre Construction, entered into the Independent Northern California Construction Agreement

1 with plaintiff Operating Engineers Local Union No. 3. It further alleges that this
2 agreement required defendants to make payments to plaintiffs based on the number of
3 hours defendants' employees worked, and to keep employee timecards documenting
4 those hours. Moreover, the agreement allegedly empowered the employee benefit plan
5 funds to appoint representatives that could audit defendants' timecards, ensuring full
6 payment of all sums owed. Finally, the complaint alleges that after audits, the agreement
7 required defendants to reimburse plaintiffs for any costs incurred (Amd. Compl. ¶¶ 1–4,
8 11–15).

9 In December 2018, plaintiffs' counsel sent a demand letter to defendant RSC after
10 it allegedly failed to comply with an audit request. RSC did not respond. Plaintiffs thus
11 initiated this action in April 2019 to compel compliance with the audit request and to
12 recover any unpaid costs that the audit might reveal. They filed a complaint and a first
13 amended complaint and served both, by process server, on defendants in June 2019.
14 Defendants never responded, and they also failed to appear at the initial case
15 management conference in August of that year. After defendants' failure to appear, the
16 undersigned judge ordered an audit of defendants' timecards and scheduled a second
17 case management conference for October. The order expressly directed that
18 “[d]efendants must appear at the [October] case management conference.” Plaintiffs
19 served a copy of that order to defendants “by email” on August 5, 2019 (Dkt. Nos. 1, 12,
20 17, 19 at 4–5).

21 After the August case management conference, plaintiffs completed the audit of
22 the timecards, apparently in cooperation with the defendants (who have yet to answer the
23 complaint or appear in this action). The audit revealed no discrepancies in payment. But
24 there remains the issue of attorney's fees and the cost of the audit. Plaintiffs informed
25 defendants by letter that they remained responsible under the agreement for reimbursing
26 the costs of the audit, including attorney's fees (Minser Decl. at Exh. D). Defendants
27 never responded to the letter, nor did they appear at the October case management
28 conference. At that conference, defendants signaled that they intended to move for

1 default judgment. The undersigned judge instead “directed” plaintiffs to file a motion
2 for attorney’s fees and costs, rather than a motion for default judgment (Dkt. No. 19 at 2,
3 4–5).

4 Plaintiffs now move to recover attorney’s fees and costs incurred from December
5 4, 2018, when plaintiffs’ counsel sent the initial letter demanding an audit, through
6 November 21, 2019. The motion requests \$3,772.00 in attorney’s fees and \$980.61 in
7 other costs, totaling \$4,752.61. Defendants have not filed an opposition (Dkt. Nos. 18,
8 19 at 1–2, 5, 11).

9 ANALYSIS

10 The motion argues that plaintiffs are entitled to attorney’s fees and costs under the
11 Payroll Inspection and Payroll Inspection Collection Procedures, which have been
12 incorporated as part of the agreement. Plaintiffs read these procedures as requiring
13 defendants to reimburse them for “attorneys’ fees and audit fees” (Dkt. No. 19 at 6).
14 This order, which concerns the assignment of fees and costs and *not* the substance of the
15 agreement, need not turn on whether plaintiffs’ motion interprets these procedures
16 correctly. Rather, plaintiffs’ motion can be decided under Section 1132(g) of Title 29 of
17 the United States Code, which allows for the assignment of attorney’s fees and costs in
18 ERISA cases. Section 1132(g) provides that in any ERISA action other than “a
19 judgment in favor of the plan,” courts have discretion to award “a reasonable attorney’s
20 fee and costs of action to either party.”

21 Our court of appeals has held that five factors inform whether fees and costs should
22 be awarded under Section 1132(g): “(1) the degree of the opposing parties’ culpability or
23 bad faith; (2) the ability of the opposing parties to satisfy an award of fees; (3) whether
24 an award of fees against the opposing parties would deter others from acting under
25 similar circumstances; (4) whether the parties requesting fees sought to benefit all
26 participants and beneficiaries of an ERISA plan or to resolve a significant legal question
27 regarding ERISA; and (5) the relative merits of the parties’ positions.” *Hummell v. S. E.*
28 *Rykoff & Co.*, 634 F.2d 446, 453 (9th Cir. 1980). Here, the first factor weighs heavily in

1 favor assigning costs and fees. Defendants failed to respond to plaintiffs’ letter
2 demanding an audit and then ignored both the complaint and the first amended
3 complaint. Furthermore, defendants failed to appear on two separate occasions for case
4 management conferences. The second failure violated a court order that expressly
5 mandated defendants’ appearance at the conference (Dkt. Nos. 17, 18, 19 at 11).
6 Accordingly, an award of attorney’s fees and costs can be justified on the first factor
7 alone.

8 Turning to the reasonableness of plaintiffs’ request, our court of appeals has
9 deemed the “lodestar” approach to be “the proper method for determining the amount of
10 attorney’s fees in ERISA actions.” Under this approach, “a court determines the
11 ‘lodestar’ amount by multiplying the number of hours reasonably expended on the
12 litigation by a reasonable hourly rate.” *Van Gerwen v. Guarantee Mut. Life Co.*, 214
13 F.3d 1041, 1045 (9th Cir. 2000). A reasonable hourly rate can be established by the
14 “prevailing market rate[] in the relevant community.” *Kelly v. Wengler*, 822 F.3d 1085,
15 1099 (9th Cir. 2016).

16 Two attorneys and two paralegals worked on this matter for plaintiffs. The two
17 attorneys, Michele Stafford and Luz Mendoza, charged \$235 and \$230 per hour
18 respectively. Ms. Stafford is a shareholder and vice-president at the firm of Saltzman &
19 Johnson. She has been at the firm since 2003 and specializes in ERISA litigation
20 matters. Ms. Mendoza is an associate at Saltzman & Johnson. She joined the firm in
21 2018 and also specializes in ERISA litigation matters (Dkt. No. 19 at 5–6; Minser Decl.
22 ¶¶ 18–21). Neither attorney charges in excess of the prevailing market rate for ERISA
23 specialists in the San Francisco Bay Area. In *Echague v. Metro. Life Ins. Co.*, Judge
24 William Orrick deemed an hourly rate of \$650 for lead counsel and \$250 for associates
25 to be reasonable for ERISA specialists in the Bay Area. 69 F. Supp. 3d 990, 996–97
26 (N.D. Cal. 2014). Ms. Mendoza falls below this reasonable associate rate, and Ms.
27 Stafford falls *well* below the reasonable lead counsel rate. Thus, both charged
28 reasonable rates.

1 The two paralegals, Nargis Shaghasi and Alicia Wood, both charged \$135 per
2 hour. Ms. Shaghasi has been a paralegal at Saltzman & Johnson since 2018. Ms. Wood
3 has been a paralegal at the firm since 2014 (Dkt. No. 19 at 5–6; Minser Decl. ¶¶ 18–21).
4 Both charged reasonable rates.

5 Turning to the number of hours billed, plaintiffs’ motion states that the two
6 attorneys and two paralegals worked for a combined 20.5 hours between December 4,
7 2018 and November 21, 2019 on this matter. Plaintiffs support this motion with billing
8 records. According to the records, Ms. Stafford billed 1.4 hours. Ms. Mendoza billed
9 9.1 hours. Ms. Shaghasi billed 7.9 hours. Ms. Wood billed 2.1 hours (Dkt. No. 19 at 6;
10 Minser Decl. at Exh. H). Plaintiffs’ records do not suggest duplicative billing or an
11 unreasonably high number of hours spent on any one task. Thus, plaintiffs submit a
12 reasonable number of hours billed.

13 The following table summarizes plaintiffs’ requested attorney’s fees:

Timekeeper	Number of Hours	Billing Rate	Total Due
Michele Stafford	1.4	\$235.00	\$329.00
Luz Mendoza	9.1	\$230.00	\$2,093.00
Nargis Shaghasi	7.9	\$135.00	\$1,066.50
Alicia Wood	2.1	\$135.00	\$283.50
Total	20.5		\$3,772.00

21 \$3,772.00 being reasonable, plaintiffs’ request for attorney’s fees is **GRANTED**.

22 That leaves plaintiffs’ request for litigation costs. The motion requests \$980.61 for
23 the complaint filing fee, messenger services, legal research fees, and service of the
24 summons and complaint on defendants. Plaintiffs have submitted records detailing this
25 request (Dkt. No. 19 at 10; Minser Decl. at Exh. H).

26 The following table summarizes plaintiffs’ requested costs:

Date	Description	Amount
April 29, 2019	Filing fee	\$400.00

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May 8, 2019	Chambers copies of Summons, Complaint, and supporting documents	\$21.25
May 30, 2019	Chambers copies of First Amended Complaint	\$21.25
May 30, 2019	Process of service of Summons and Complaint to RSC General & Engineering	\$199.37
May 30, 2019	Process of Service of Summons and Complaint to Reyre Construction	\$199.37
May 30, 2019	Process of Service of Summons and Complaint to Richard Ray Spaulding	\$98.10
May 30, 2019	Legal research on Lexis	\$20.02
July 25, 2019	Chambers copies of Request to Continue Case Management Conference	\$21.25
Total		\$980.61

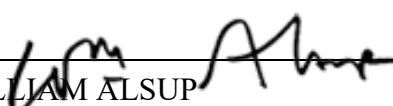
Plaintiffs' requested costs rate as reasonable, so their motion for litigation costs of \$980.61 is also **GRANTED**.

CONCLUSION

Plaintiffs' motion for attorney's fees and costs totaling \$4,752.61 is **GRANTED**.

IT IS SO ORDERED.

Dated: June 18, 2020.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE