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

8 BOARDS OF TRUSTEES OF THE
9 LOCALS 302 AND 612 OF THE
10 INTERNATIONAL UNION OF
OPERATING ENGINEERS
CONSTRUCTION INDUSTRY HEALTH
AND SECURITY FUND, et al.,

11 Plaintiffs,

12 v.

13 DONKEY HOOF LLC, a Washington limited
14 liability company, Contractor's License No.
DONKEHL791J9, UBI No. 604 629 660,

15 Defendant.

CASE NO. 2:22-cv-00731-JHC

ORDER

16
17 **I**

18 **INTRODUCTION**

19 This matter comes before the Court on Plaintiffs Boards of Trustees of the Locals 302
20 and 612 of the International Union of Operating Engineers Construction Industry Health and
21 Security Fund, Locals 302 and 612 of the International Union of Operating Engineers-Employers
22 Construction Industry Retirement Fund, and Western Washington Operating Engineers-
23 Employers Training Trust Fund's (collectively, "Trust Funds") Motion for Default Judgment
24 against Defendant Donkey Hoof LLC. Dkt. #8. The motion is unopposed. *See generally* Dkt.

1 The Court has considered the motion, the record, and the applicable law. Being fully advised,
2 the Court DENIES the motion without prejudice.

3 II

4 BACKGROUND

5 In 2018, Defendant Donkey Hoof entered into a collective bargaining agreement (CBA)
6 with Operating Engineers Local 302 and Associated General Contractors of Washington. Dkt.
7 #8 at 4; Dkt. #9 at 9. The CBA incorporates the agreements governing the Plaintiffs Trust
8 Funds. Dkt. #1 at 2–3. These agreements require Donkey Hoof to pay monthly employee
9 benefit contributions to Trust Funds for the number of hours worked by employees. Dkt. #8 at 7.
10 They also stipulate that Donkey Hoof owes the Trust Funds 12% in liquidated damages and 12%
11 annual interest on unpaid contributions.¹

12 From July 2021 through the present, Donkey Hoof has only paid some of the required
13 employee contributions to Trust Funds. Dkt. #1 at 3. Plaintiffs filed this Complaint in May 2022
14 and served Defendant with process. Dkt. #1; Dkt. #2, 4. They claim that under the Employee
15 Retirement Income Security Act of 1974, 29 U.S.C. § 1001 (ERISA) and the CBA, Defendant
16 owes Plaintiffs Trust Funds damages for not paying the mandatory contributions. Dkt. #1 at 3.

17 In August 2022, the Clerk entered an Order of Default against Defendant for failure to
18 appear. Dkt. #7; *see* Fed. R. Civ. P. 55(a). Plaintiffs claim that Defendant owes them a total of
19 \$46,713.04, including:

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21 (1) \$36,402.37 for unpaid contributions between July 2021 and January 2022;

22 ¹ The liquidated damages and interest are calculated only on unpaid contributions for the Health
23 and Security, Retirement, and Apprenticeship and Training contribution funds. Other “ancillary funds”
24 include the Working Dues, Union Program Fund, Political Program Fund, and International Training
Fund. Dkt. #9 at 2. Plaintiffs Trust Funds collect these ancillary funds and distribute them according to
the CBA. *Id.* at 2, 34–35.

- (2) \$3,872.05 in liquidated damages at 12% of the unpaid contributions;
- (3) \$3,874.12 in 12% annual interest on the balance of unpaid contributions;
- (4) \$700.00 in “referral attorney fees”;
- (5) \$1,292.50 in current attorney fees; and
- (6) \$572.00 in litigation costs.

Dkt. # 8 at 10–11.

III

DISCUSSION

A. Legal Standards

If a defendant fails to plead or otherwise defend, the clerk enters the party’s default. Fed. R. Civ. P. 55(a). Then, upon a plaintiff’s request or motion, the court may grant default judgment for the plaintiff. Fed. R. Civ. P. 55(b)(2); *see Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). On default judgment motions, “[t]he court must accept all well-pled allegations of the complaint as established fact, except allegations related to the amount of damages.” *UN4 Prods., Inc. v. Primozich*, 372 F. Supp. 3d 1129, 1133 (W.D. Wash. 2019) (citing *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987)). Courts typically consider these factors for a determination of 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.

Eitel v. McCool, 782 F.2d 1470, 1471–72 (9th Cir. 1986). Default judgments are generally disfavored, so a “[d]efault judgment is appropriate only if the well-pleaded factual allegations of the complaint suffice to establish a plaintiff’s entitlement to a judgment under the applicable

1 law.” *Dentist Ins. Co. v. Luke St. Marie Valley Dental Grp., P.L.L.C.*, CASE NO. 2:21-cv-
2 01229-JHC, 2022 WL 1984124 (W.D. Wash. June 6, 2022) (citing *DIRECTV, Inc. v. Hoa*
3 *Huynh*, 503 F.3d 847, 855 (9th Cir. 2007)).

4 B. Application of *Eitel* Factors

5 a. Factors Weighing Against Default Judgment

6 The second, third, fourth, fifth, and seventh *Eitel* factors weigh against default judgment.
7 There appear to be significant inconsistencies between Defendant’s contribution compliance
8 documents and the calculations from Plaintiffs. In the contribution forms for July 2021 through
9 October 2021, Defendant used the number of employees who worked as the multiplier for
10 contribution amounts, whereas Plaintiffs use the number of total employee hours worked. Dkt.
11 #9 at 61–68. Defendant then paid Plaintiffs exactly the amounts calculated from the number of
12 employees for the respective months. *Id.* at 224–27. This suggests a factual dispute as to
13 Defendant’s requirements under the CBA. Though the CBA only mentions employee hours as a
14 metric for determining contribution payments, Plaintiffs do not explain the discrepancy between
15 their calculations and Defendant’s forms. *Id.* at 31–33. In several monthly reports, Defendant
16 also does not include the ancillary funds in its contribution calculations. Dkt. #9 at 61–68. But
17 Plaintiffs include the ancillary funds in their total amount of unpaid contributions every month—
18 though they do not include them in liquidated damages or interest calculations. *Id.* at 61–68.
19 This inconsistency is especially evident in the months of July 2021 through September 2021.
20 Under the CBA, Defendant should deduct 2% of gross wages from employees for dues and pay
21 the money from those deductions to Plaintiffs monthly. Dkt. #9 at 34. In its compliance forms
22 from July to September, Defendant specifically noted that “302 Dues”—one of the ancillary
23 funds categories—were not taken out until September 24, 2021. Dkt. #9 at 61–63. But Plaintiffs
24

1 still included “302 Dues” in their calculations for unpaid contributions for those months. Dkt. #9
2 at 61–63; 224–26. These discrepancies between Defendant’s documents and Plaintiffs’
3 calculations suggest potential disputes over material facts, weighing against default judgment on
4 *Eitel* factor five.

5 These inconsistencies also cast doubt over the merits and sufficiency of the complaint,
6 the sum of money at stake, and the validity of default judgment in this case when courts
7 generally favor deciding cases on their merits—*Eitel* factors two, three, four, and seven.

8 “Courts often consider the second and third *Eitel* factors together.” *Developers Sur. and*
9 *Indem. Co. v. View Point Builders, Inc.*, CASE NO. C20-0221JLR, 2020 WL 3303046, at *5
10 (W.D. Wash. Jun. 17, 2022). Plaintiffs claim that Defendant is liable for damages because it
11 failed to pay employee contributions outlined under ERISA and the CBA between July 2021 and
12 January 2022. Dkt. # 1 at 3. Under Section 515 of ERISA, employers must pay contributions
13 that are required “under the terms of the plan or under the terms of a collectively bargained
14 agreement.” 29 U.S.C. § 1145. Section 502(g) of ERISA states,

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16 In any action under this subchapter by a fiduciary for or on behalf of a plan to
17 enforce [Section 515] in which a judgment in favor of the plan is awarded, the
18 court shall award the plan-

- 18 (A) the unpaid contributions
- 19 (B) interest on the unpaid contributions
- 20 (C) an amount equal to the great of
 - 21 (i) interest on the unpaid contributions, or
 - 22 (ii) liquidated damages provided for under the plan in an amount not in
23 excess of 20% . . .
- 24 (D) reasonable attorney’s fees and costs of the action, to be paid by the
defendant, and
- (E) such other legal or equitable relief as the court deems appropriate.

23 29 U.S.C. § 1132(g)(2). The elements of a Section 515 claim of unpaid contributions are: “(1)
24 the trust fund is a multi-employer plan as defined by 29 U.S.C. 1002(37); (2) the defendant is an

1 employer obligated to contribute under the plan's terms; and (3) the defendant failed to
2 contribute in accordance with the plan.” *Bd. of Trustees of Sheet Metal Workers Health Care*
3 *Plan of N. California v. Gervasio Env't Sys.*, No. C 03-04858 WHA, 2004 WL 1465719, at *1
4 (N.D. Cal. May 21, 2004).

5 Plaintiffs submit a declaration attaching the CBA and Trust Agreements, which provide
6 for recovery of outstanding contribution payments on employee hours plus 12% in liquidated
7 damages and annual interest. Dkt. #9 at 98, 160, 198. But Defendant’s contribution forms are
8 the only documents in the record that identify the employees covered by the Trust Funds and
9 confirm the number of hours they worked each month, which are key facts for Plaintiffs’ claim
10 that Defendant failed to contribute according to the CBA. *See Emp. Painters’ Tr. v. Cascade*
11 *Coatings*, No. C12-0101JLR, 2014 WL 526776, at *5 (W.D. Wash. Feb. 10, 2014); Dkt. #9 at
12 61–67. Because these documents conflict with Plaintiffs’ accounting of what Defendant owes
13 under the CBA, Plaintiffs’ claim is not presently sufficient. Thus, these factors weigh against
14 default judgment.

15 The fourth *Eitel* factor “considers whether the amount of money requested is proportional
16 to the harm caused.” *Sun Life Assurance Co. of Canada v. Estate of Wheeler*, CASE NO. C19-
17 0364JLR, 2020 WL 433352, at *4 (W.D. Wash. Jan. 28, 2020). Plaintiffs request a total of
18 \$46,713.04 on default judgment, including \$44,148.54 for unpaid contributions, liquidated
19 damages, and interest. Dkt. #8 at 10, 12. Though these categories of awards are authorized
20 under Section 502 of ERISA and the CBA, Plaintiffs’ request is a significant sum. The
21 discrepancies between the amount requested and the documents that provide key information for
22 the calculation of that amount create doubt as to whether it is proportional to the harm Defendant
23 caused. This factor weighs against default judgment.

1 Generally, cases “should be decided upon their merits whenever reasonably possible,” so
2 courts disfavor default judgment on this factor. *Eitel*, 782 F.2d at 1472. In this case, where
3 several other factors—including the merits of Plaintiffs’ claims—weigh against default
4 judgment, this factor also weighs against granting Plaintiffs’ motion. *See Emp. Painters’ Tr. v.*
5 *Cascade Coatings*, No. C12-0101JLR, 2014 WL 526776, at *7 (W.D. Wash. Feb. 10, 2014).

6 b. Factors Favoring Default Judgment

7 The first and sixth factors support default judgment in this case.

8 “[P]rejudice exists where the plaintiff has no recourse for recovery other than default
9 judgment.” *Curtis v. Illumination Arts, Inc.*, 33 F. Supp. 3d 1200, 1211 (W.D. Wash. 2014)
10 (citation and internal quotation marks omitted). Defendant has failed to respond to this action, so
11 default judgment is Plaintiffs’ only means for recovery. *See Eve Nevada, LLC v. Derbyshire*,
12 CASE NO. 21-0251-LK, 2022 WL 279030 (W.D. Wash. Jan. 31, 2022); *Bd. of Trs. of U.A. Loc.*
13 *No. 159 Health & Welfare Tr. Fund v. RT/DT, Inc.*, No. C 12-05111 JSW, 2013 WL 2237871, at
14 *4 (N.D. Cal. May 21, 2013) (“Because ERISA provides that federal courts have exclusive
15 jurisdiction for claims of this nature, denial of Plaintiffs’ Motion would leave them without a
16 remedy.”). Thus, this factor supports default judgment.

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18 The sixth *Eitel* factor assesses whether Defendant’s default for failure to appear was
19 because of excusable neglect. *Bds. of Trs. of Inland Empire Elec. Workers Welfare Tr. v. Excel*
20 *Elec. Servs., Inc.*, No. 2:21-CV-00200-MKD, 2022 WL 1243663, at *4 (E.D. Wash. Apr. 26,
21 2022). Generally, courts do not find excusable neglect when defendants were properly served
22 with the complaint. *See, e.g., Maersk Line v. Golden Harvest Alaska Seafood LLC*, No. C20-
23 1140-JLR-MLP, 2020 WL 6083464, at *4 (W.D. Wash. Sept. 30, 2020), *report and*

1 *recommendation adopted*, No. C20-1140 JLR, 2020 WL 6077419 (W.D. Wash. Oct. 15, 2020).
2 Plaintiffs establish that they properly served Defendant. *See* Dkt. #4.

3 In sum, the *Eitel* factors do not support default judgment. There are potential disputes of
4 material fact related to documents that establish an essential element of Plaintiffs' claims and
5 estimation of damages. These factors outweigh the possible prejudice Plaintiffs may experience
6 without default judgment and the likelihood that Defendant's default was not due to excusable
7 neglect. Plaintiffs' motion for default judgment is DENIED without prejudice.

8 C. Damages Calculation

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10 The Court does not accept the amount of claimed damages as true in a default judgment
11 motion. *Geddes v. United Fin. Grp.*, 559 F.2d 557, 560 (9th Cir. 1977). And it has determined
12 above that there appear to be inconsistencies between the record and Plaintiffs' calculations of
13 unpaid contributions. Plaintiffs also do not cite to anything in the record that explains the
14 \$700.00 they requested in "referral attorney fees." Dkt. #1 at 4; *see Bd. of Trs. of Auto.*
15 *Machinists Pension Tr. v. Ross Island Sand & Gravel Co.*, No. C18-0571JLR, 2018 WL
16 4051806, at *2 (W.D. Wash. Aug. 24, 2018) (denying default judgment and requiring plaintiff to
17 explain "referral attorney fees" further in an amended motion).

18 IV

19 CONCLUSION

20 For the foregoing reasons, the Court DENIES without prejudice Plaintiffs' Motion for
21 Default Judgment. Dkt. #8. Plaintiffs may refile with a more thorough explanation of their
22 contribution calculations and attorney fees.

23 Dated this 15th day of December, 2022.

John H. Chun

John H. Chun
United States District Judge

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