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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BOARDS OF TRUSTEES OF THE
LOCAL 191 I.B.E.W. HEALTH AND
WELFARE TRUST FUND; LOCAL 191
I.B.E.W. MONEY PURCHASE
PENSION TRUST; NORTHWEST
WASHINGTON ELECTRICAL
INDUSTRY JOINT APPRENTICESHIP
& TRAINING TRUST and I.B.E.W.
DISTRICT NO. 9 PENSION PLAN,

Plaintiffs,

v.

OP ELECTRIC LLC, a Washington
limited liability company, Contractor's
License No. OPELEEL828QB, UBI NO.
604 309 923 and AMERICAN
CONTRACTORS INDEMNITY
COMPANY, Bond No. 100593831,

Defendants.

NO. 2:23-cv-01006-JHC

ORDER RE: MOTION FOR DEFAULT
JUDGMENT

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I

INTRODUCTION

This matter comes before the Court on Plaintiff’s motion for default judgment against Defendant OP Electric LLC (OPE). Dkt. # 11. The motion is unopposed. *See generally* Dkt. The Court has considered the motion, the record, and the applicable law. Being fully advised, the Court GRANTS the motion.

II

DISCUSSION

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 when evaluating a request for 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.

Eitel v. McCool, 782 F.2d 1470, 1471–72 (9th Cir. 1986). Default judgments are generally disfavored, so “default 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.*, No. 2:21-cv-01229-
2 JHC, 2022 WL 1984124 (W.D. Wash. Jun. 6, 2022) (citing *DIRECTV, Inc. v. Hoa Huynh*,
3 503 F.3d 847, 855 (9th Cir. 2007)).

4 A. Application of *Eitel* Factors

5 1. Prejudice to Plaintiff

6 “[P]rejudice exists where the plaintiff has no recourse for recovery other than default
7 judgment.” *Curtis v. Illumination Arts, Inc.*, 33 F. Supp. 3d 1200, 1211 (W.D. Wash. 2014)
8 (citation and internal quotation marks omitted). OPE has failed to respond to this action, so
9 default judgment is Plaintiff’s only means for recovery. *See Eve Nevada, LLC v. Derbyshire*,
10 No. 21-0251-LK, 2022 WL 279030 (W.D. Wash. Jan. 31, 2022). Thus, this factor supports
11 default judgment.

12 2. Merits of Plaintiff’s Claims and Sufficiency of Complaint

13 “Courts often consider the second and third *Eitel* factors together.” *Devs. Sur. and*
14 *Indem. Co. v. View Point Builders, Inc.*, No. C20-0221JLR, 2020 WL 3303046, at *5 (W.D.
15 Wash. Jun. 17, 2022). As mentioned above, the Court must accept all well-pleaded
16 allegations in the complaint as established fact. Accepting such allegations, the complaint
17 suffices to state the causes of action directed against OPE. Dkt. # 1. Thus, the second and
18 third *Eitel* factors weigh in favor of Plaintiff.

19 3. Sum of Money at Stake

20 This factor “considers whether the amount of money requested is proportional to the
21 harm caused.” *Sun Life Assurance Co. of Canada v. Estate of Wheeler*, No. C19-0364JLR,
22 2020 WL 433352, at *4 (W.D. Wash. Jan. 28, 2020). Here, because Plaintiff seeks only the

1 remedies available under the parties' agreements, there is proportionality. Thus, the fourth
2 *Eitel* factor supports default judgment.

3 4. Possibility of Dispute Over Material Facts

4 There is no sign that the material facts are in dispute. And again, "[t]he general rule of
5 law is that upon default the factual allegations of the complaint, except those relating to
6 damages, will be taken as true." *Geddes v. United Fin. Grp.*, 559 F.2d 557, 560 (9th Cir.
7 1977). OPE failed to respond, so the Clerk correctly entered default against it. Dkt. # 8.

8 5. Probability that Default was Because of Excusable Neglect

9 The sixth *Eitel* factor assesses whether the defendant's default for failure to appear
10 was because of excusable neglect. *Boards of Trustees of Inland Empire Elec. Workers*
11 *Welfare Tr. v. Excel Elec. Servs., Inc.*, No. 2:21-CV-00200-MKD, 2022 WL 1243663, at *4
12 (E.D. Wash. Apr. 26, 2022). Generally, courts do not find excusable neglect when defendants
13 were properly served with the complaint. *See, e.g., Maersk Line v. Golden Harvest Alaska*
14 *Seafood LLC*, No. C20-1140-JLR-MLP, 2020 WL 6083464, at *4 (W.D. Wash. Sept. 30,
15 2020), *report and recommendation adopted*, No. C20-1140 JLR, 2020 WL 6077419 (W.D.
16 Wash. Oct. 15, 2020). Plaintiff establishes that it did properly serve OPE. *See* Dkt. # 5. So,
17 this factor weighs in favor of default judgment.

18 6. Policy Favoring Decision on the Merits

19 Generally, cases "should be decided upon their merits whenever reasonably possible,"
20 so courts disfavor default judgment on this factor. *Eitel*, 782 F.2d at 1472. But in this case,
21 OPE's failure to appear or respond "makes a decision on the merits impractical, if not
22 impossible," so the Court is not precluded from granting default judgment. *PepsiCo, Inc. v.*

1 *Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002); *see also Emp. Painters' Trust*
2 *v. Dahl Constr. Servs., Inc.*, No. C19-1541-RSM, 2020 WL 3639591 (W.D. Wash. July 6,
3 2020). Thus, default judgment is an appropriate remedy in this case.

4 In sum, the *Eitel* factors support default judgment.

5 B. Damages; Attorney Fees & Costs.

6 Because the Court does not accept the amount of claimed damages as true in a default
7 judgment motion, it must assess whether Plaintiff's claimed damages are appropriate to
8 award. *Geddes*, 559 F.2d at 560. The plaintiff has the burden of proving its requested
9 damages are reasonable and supported by evidence. *Bd. of Trs. Of the Boilermaker Vacation*
10 *Tr. v. Skelly, Inc.*, 389 F. Supp. 2d 1222, 1226 (N.D. Cal. 2005).

11 The declarations of Tonya Osborne (Dkt. # 12), Andrew Walker (Dkt. # 13), Nicole
12 Dwarzki (Dkt. # 14), along with the attachments to these documents, provide sufficient evidence
13 to support each discrete amount sought to be reduced to judgment: **\$70,333.10** comprised of the
14 following amounts:

- 15 a. **\$60,636.05** comprised of \$48,984.29 in contributions, \$4,823.91 in liquidated
16 damages, \$1,683.29 in interest, and \$5,144.56 in audit fees for the April 2021
17 through March 2023 audit period;
- 18 b. **\$6,529.55** comprised of \$5,760.07 in liquidated damages and \$769.48 in interest
19 for the August 2021 through December 2022 delinquent period; and
- 20 c. \$487.00 in litigation costs and \$2,680.50 in attorney fees.

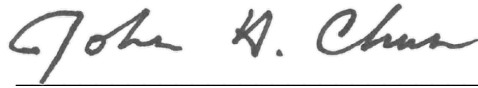
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III

CONCLUSION

For the foregoing reasons, the Court GRANTS Plaintiff's motion for default judgment. Plaintiff will have a judgment against OPE as set forth above along with post-judgment interest until paid.

Dated this 15th day of December, 2023.



JOHN H. CHUN
UNITED STATES DISTRICT JUDGE