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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

TRUSTEES OF THE SOUTHERN CALIFORNIA IBEW-NECA PENSION PLAN; TRUSTEES OF THE SOUTHERN CALIFORNIA IBEW-NECA HEALTH TRUST FUND, TRUSTEES OF THE LOS ANGELES COUNTY ELECTRICAL EDUCATIONAL AND TRAINING TRUST FUND; TRUSTEES OF THE NATIONAL ELECTRICAL BENEFIT FUND; TRUSTEES OF THE SOUTHERN CALIFORNIA IBEW-NECA LABOR-MANAGEMENT COOPERATION COMMITTEE, CONTRACT COMPLIANCE FUND; NATIONAL ELECTRICAL INDUSTRY FUND; ADMINISTRATIVE MAINTENANCE FUND; LOS ANGELES ELECTRICAL WORKERS CREDIT UNION,

Plaintiffs,

v.

GARTEL CORP.,

Defendant.

Case No. 2:11-cv-5929-ODW(SHx)

**ORDER GRANTING MOTION FOR
DEFAULT JUDGMENT [28]**

I. INTRODUCTION

Plaintiffs are trustees of various trusts created under trust agreements between a local union chapter and an employers' association. These agreements and others

1 obligated Defendant Gartel Corp. to pay certain contributions at specified rates
2 depending on how many hours its employees worked on covered projects. When
3 Gartel failed to pay all required fringe-benefit contributions, Plaintiffs filed suit.
4 Since Gartel never answered, the Clerk entered default, and Plaintiffs moved for
5 default judgment. After considering Gartel’s liability and Plaintiffs’ requested
6 damages and costs, the Court **GRANTS** Plaintiffs’ Motion for Default Judgment.¹

7 **II. FACTUAL BACKGROUND**

8 Plaintiffs Trustees of the Southern California IBEW-NECA Pension Plan,
9 Trustees of the Southern California IBEW-NECA Health Trust Fund, Trustees of the
10 Los Angeles County Electrical Educational and Training Trust Fund, Trustees of the
11 National Electrical Benefit Fund, and Trustees of the Southern California IBEW-
12 NECA Labor-Management Cooperation Committee are trustees of express trusts
13 created under trust agreements between various chapters of the International
14 Brotherhood of Electrical Workers (“IBEW”) and employers’ associations of the
15 National Electrical Contractors Association (“NECA”). (Compl. ¶ 5.) Contract
16 Compliance Fund, National Electrical Industry Fund, Administrative Maintenance
17 Fund, and Los Angeles Electrical Workers Credit Union all collect various payments
18 authorized under collective-bargaining agreements. (*Id.*)

19 Gartel is incorporated and has its principal place of business in California. (*Id.*
20 ¶ 6.) On or before January 1, 2008, Gartel performed electrical work on various
21 public-works projects covered by the Los Angeles Unified School District Project
22 Stabilization Agreement–New School Construction and Major Rehabilitation Funded
23 by Proposition BB and/or Measure K (“PSA”). (*Id.* ¶ 7.) Gartel is bound to the PSA
24 for work performed on projects covered by the agreement. (*Id.* ¶ 8.)

25 The PSA incorporates, among others, the Inside Wiremen’s Agreement and the
26 Sound & Communications Agreement, which are collective-bargaining agreements

27
28 ¹ After carefully considering the papers filed with respect to this Motion, the Court deems the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; L.R. 7-15.

1 between IBEW Local 11 and the Los Angeles County Chapter of NECA. (*Id.* ¶ 9.)
2 On November 17, 2008, Gartel also signed a letter of assent to both of these
3 agreements. (*Id.* ¶¶ 10–11.) The Inside Wiremen’s Agreement incorporates the terms
4 of Plaintiffs’ trust agreements. (Johnson Decl. ¶ 7.) As an employer, the agreements
5 obligate Gartel to pay, among other things, fringe-benefit contributions on a monthly
6 basis at specified rates for each hour worked by covered employees. (Compl.
7 ¶ 14(B).) If an employer fails to timely pay mandated contributions, the employer
8 also becomes liable for liquidated damages, interest, audit fees, litigation expenses,
9 and reasonable attorneys’ fees. (Johnson Decl. Ex. B, at 16; Ex. C, at 31.)

10 Since January 1, 2008, Gartel has failed to pay to Plaintiffs all required fringe-
11 benefit and other contributions for five different Los Angeles Unified School District
12 projects. (Compl. ¶ 18; Ware Decl. Ex. 1.) Plaintiffs’ auditor calculated \$109,335.40
13 in missing contributions for the period of January 1, 2009, through April 24, 2012.
14 (Ware ¶ 6, Ex. 1; Mot. 4.)

15 On July 19, 2011, Plaintiffs filed a Complaint against Gartel for breach of the
16 trust and collective-bargaining agreements and violation of the Employee Retirement
17 Income Security Act (“ERISA”). Plaintiffs filed a proof of service on August 24,
18 2011. (ECF No. 5.) Since Gartel never answered, the Clerk entered default. (ECF
19 No. 16.) On April 1, 2013, Plaintiffs moved for default judgment. Defendants have
20 not opposed the Motion, and it is now before the Court for decision.

21 **III. LEGAL STANDARD**

22 Federal Rule of Civil Procedure 55(b) authorizes a district court to grant default
23 judgment after the Clerk enters default under Rule 55(a). Local Rule 55-1 requires
24 that the movant submit a declaration establishing (1) when and against which party
25 default was entered; (2) identification of the pleading to which default was entered;
26 (3) whether the defaulting party is a minor, incompetent person, or active
27 servicemember; and (4) that the defaulting party was properly served with notice.

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1 A district court has discretion whether to enter a default judgment. *Aldabe v.*
2 *Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). Upon default, the defendant’s liability
3 generally is conclusively established, and the well-pleaded factual allegations in the
4 complaint are accepted as true. *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917–
5 19 (9th Cir. 1987) (per curiam) (citing *Geddes v. United Fin. Grp.*, 559 F.2d 557, 560
6 (9th Cir. 1977)).

7 In exercising its discretion, a court must consider several factors, including
8 (1) the possibility of prejudice to plaintiff; (2) the merits of plaintiff’s substantive
9 claim; (3) the sufficiency of the complaint; (4) the sum of money at stake; (5) the
10 possibility of a dispute concerning material facts; (6) whether the defendant’s default
11 was due to excusable neglect; and (7) the strong policy underlying the Federal Rules
12 of Civil Procedure favoring decisions on the merits. *Eitel v. McCool*, 782 F.2d 1470,
13 1471–72 (9th Cir. 1986).

14 IV. DISCUSSION

15 Plaintiffs argue that Gartel breached the Inside Wiremen’s Agreement and the
16 PSA by failing to pay all mandated fringe-benefit contributions for hours worked by
17 Gartel employees on covered projects. As a result, Plaintiffs seek the delinquent
18 contributions, liquidated damages, prejudgment interest, and costs.

19 A. Liability

20 ERISA provides that, if a multiemployer plan or collective-bargaining
21 agreement obligates an employer to make contributions, the employer must make the
22 contributions according to the terms and conditions of the relevant agreements. 29
23 U.S.C. § 1145.

24 Gartel’s failure to timely and fully pay all contributions calculated according to
25 the rates specified in the Inside Wiremen’s Agreement and the PSA—as confirmed by
26 Plaintiffs’ audit—violates § 1145. This violation thus renders Gartel liable for the
27 damages and remedies enumerated in the agreements and provided under ERISA.

28 ///

1 It is also apparent that Gartel was properly served with process. Section
2 415.20(a) of the California Code of Civil Procedure provides a person may effect
3 substitute service on a corporation by delivering a copy of the summons and
4 complaint to the corporation's business address and leaving the documents with a
5 person apparently in charge. Here, after several unfruitful attempts, Plaintiffs served a
6 Jane Doe occupant of Gartel's registered business address and also mailed a copy of
7 the documents to the same location. (ECF No. 5, at 1.) There is no indication that the
8 mail was not received. Service was therefore proper under California law.

9 **B. Damages**

10 Plaintiffs request several types of damages from Gartel, including the unpaid
11 contributions, prejudgment interest, liquidated damages, audit fees, attorneys' fees,
12 and litigation expenses. The Court considers each in turn.

13 When a fiduciary of a covered plan obtains a favorable judgment, ERISA
14 mandates that a court award unpaid contributions, interest on those contributions,
15 liquidated damages or a similar amount, reasonable attorneys' fees, and other relief as
16 the court deems appropriate. 29 U.S.C. § 1132(g)(2).

17 *1. Unpaid contributions*

18 Plaintiffs' auditor reviewed Gartel's payroll records for the period between
19 January 1, 2008, and April 24, 2012. (Ware Decl. ¶ 6.) The auditor determined that
20 Gartel failed to pay \$109,335.40 in fringe-benefit contributions on five different Los
21 Angeles Unified School District projects. (*Id.* Ex. 1.) The auditor computed this
22 amount by multiplying the hours worked and wages paid to Gartel employees during
23 the relevant time period by the rates specified in the agreements. Plaintiffs are
24 therefore entitled to \$109,335.40 in unpaid contributions.

25 *2. Prejudgment interest*

26 ERISA specifically dictates that a court award prejudgment interest in unpaid-
27 contribution actions like this one. 29 U.S.C. § 1132(g)(2)(B). The interest rate is
28 either the rate set under the relevant agreements, if any, or the rate established under

1 26 U.S.C. § 6621. Here, Plaintiffs invoke the latter interest-rate determination and
2 seek \$10,214.78 in interest calculated through May 6, 2013, the hearing date of this
3 Motion.

4 Section 6621 provides that the underpayment interest shall be the federal short-
5 term interest rate plus three percentage points. 26 U.S.C. § 6621(a)(2). The Treasury
6 Secretary determines the short-term interest rate. *Id.* § 6621(b)(1). Interest is
7 compounded on a daily basis. Rev. Rul. 2012-32, 2012-52 I.R.B. 762 (2012).

8 Plaintiffs' auditor calculated the prejudgment interest using the historical
9 underpayment interest rates, culminating with the current three-percent rate. (Johnson
10 Decl. Ex. G.) Gartel accordingly owes Plaintiffs \$10,214.78 in prejudgment interest.

11 3. *Liquidated damages*

12 ERISA also provides that a prevailing trust fiduciary is entitled the greater of an
13 amount equal to the interest on the unpaid contributions or the liquidated damages
14 provided under the applicable agreements. 29 U.S.C. § 1132(g)(2)(C). But the statute
15 caps the liquidated damages at 20 percent of the unpaid contributions. *Id.*
16 § 1132(g)(2)(C)(ii).

17 The agreements here provide that liquidated damages are determined based on
18 the number of days a payment is late, up to 18 percent per annum. Plaintiffs request a
19 total of \$47,119.87, which is also calculated through the hearing date. But Plaintiffs'
20 requested amount exceeds ERISA's liquidated-damages cap. Plaintiffs are therefore
21 only entitled to \$21,867.08 in liquidated damages, which is 20 percent of Gartel's
22 unpaid contributions.

23 4. *Audit fees*

24 Plaintiffs additionally request \$3,037.50 in audit fees. ERISA does not
25 specifically authorize an audit-fees award. But § 1132 does permit a court to award
26 "such other legal or equitable relief as the court deems appropriate." *Id.*
27 § 1132(g)(2)(E). In Section 7.52 of the Inside Wiremen's Agreement, the parties
28 agreed that a delinquent contractor would pay audit fees incurred by the trustees in a

1 collection action. The Court thus finds it appropriate to award Plaintiffs \$3,037.50 in
2 audit fees.

3 5. *Attorneys' fees and litigation costs*

4 ERISA further requires that a court award reasonable attorneys' fees in an
5 unpaid-contribution action. *Id.* § 1132(g)(2)(D). The Ninth Circuit has recognized
6 that "attorney's fees are no longer discretionary in § 1132(g)(2) cases." *Operating*
7 *Eng'rs Pension Trust v. Reed*, 726 F.2d 513, 514 (9th Cir. 1984).

8 A court calculates reasonable attorneys' fees using a "hybrid lodestar /
9 multiplier approach." *McElwaine v. US W., Inc.*, 176 F.3d 1167, 1173 (9th Cir.
10 1999). First, one multiplies the number of hours reasonably expended on the litigation
11 by a reasonable hourly rate. *D'Emanuele v. Montgomery Ward & Co.*, 904 F.2d 1379,
12 1383 (9th Cir. 1990), *overruled on other grounds by Burlington v. Dague*, 505 U.S.
13 557 (1992). Second, the court may increase or decrease the lodestar amount after
14 assessing the factors enunciated by the Ninth Circuit in *Kerr v. Screen Extras Guild,*
15 *Inc.*, 526 F.2d 67, 70 (9th Cir.1975). *D'Emanuele*, 904 F.2d at 1383.

16 Plaintiffs seek \$44,265.66 in hourly attorneys' fees (including paralegal work)
17 and \$5,284.66 in litigation expenses. But in an accompanying declaration, Plaintiffs
18 list \$38,981.00 in attorneys' and paralegal fees. Plaintiffs submitted billing records
19 for each of the attorneys and paralegals that worked on the case.

20 A review of the billing records reveals that a significant portion of the hours
21 were spent on Gartel's bankruptcy matter—a separate, though partially related, case.
22 It appears that 99.3 hours were spent exclusively on this case. Multiplying those
23 hourly totals by the various billing rates results in \$22,467.00 in attorneys' and
24 paralegal fees—an average of \$226.25 per hour. The Court accordingly awards
25 Plaintiffs \$22,467.00 in attorneys' and paralegal fees.

Attorney/Paralegal	Total Hours	Years out of Law School	Hourly Rate	Total
JLS	43.4	7	\$220	\$9,526
JLS	28.4	7	\$240	\$6,816

1	JPM	14	8	\$220	\$3,080
2	MTB	0	5	\$195	\$0
3	SGL	4.6	21	\$280	\$1,288
4	SGL	4.4	21	\$300	\$1,320
5	KAM	3.4	n/a	\$95	\$323
6	NEW	1.2	n/a	\$95	\$114

7 Plaintiff's requested costs include process-server fees, copying, postage,
8 mileage, parking, scanning, faxing, printing, legal research, a filing fee, and subpoena
9 fees. The Court agrees that Gartel must reimburse Plaintiffs for most of these costs.
10 29 U.S.C. § 1132(g)(2)(D)–(E). But the Court notes again that some costs are
11 associated with the bankruptcy matter, and other computations are unreasonably high.

12 The Court therefore adjusts the costs and finds that \$2,717.34 is a reasonable
13 cost award. Specifically, the Court finds that \$0.10 per page is reasonable for
14 copying, faxing, printing, and scanning—not \$0.25 per page. Plaintiffs also do not
15 apportion their PACER research, legal research, copying, printing, faxing, or scanning
16 between the bankruptcy matter and this case. The Court thus reduces each requested
17 amount by 50 percent. The mileage and parking charges similarly do not apply to this
18 case, so the Court excludes them.

19	Item	Units	Reasonable Cost	Total
20	Process server	14	varies	\$535.00
21	Copies	1,147	\$0.10	\$114.70
22	Postage	8	Varies	\$71.70
23	Fax	22	\$0.10	\$2.20
24	Mileage	0	\$0	\$0
25	Legal research	10	varies	\$962.75
26	PACER	varies	varies	\$36.99
27	Parking	0	\$0	\$0
28	Printing	1,408	\$0.10	\$140.80

1	Scanning	3,210	\$0.10	\$321.00
2	Subpoena costs	1	n/a	\$182.20
3	Filing fee	1	\$350	\$350.00

4 **V. CONCLUSION**

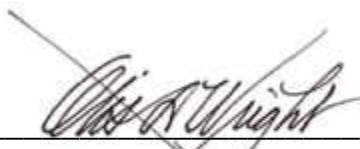
5 For the reasons discussed above, Plaintiffs' Motion for Default Judgment is
6 **GRANTED.** Gartel shall pay Plaintiffs a total of \$169,639.10 in damages and costs,
7 consisting of the following amounts:

- 8 • \$109,335.40 in unpaid contributions;
- 9 • \$10,214.78 in prejudgment interest;
- 10 • \$21,867.08 in liquidated damages;
- 11 • \$3,037.50 in audit fees;
- 12 • \$22,467.00 in attorneys' fees; and
- 13 • \$2,717.34 in costs.

14 The Court will enter judgment in accordance with this order.

15 **IT IS SO ORDERED.**

16
17 April 19, 2013

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20 _____
21 **OTIS D. WRIGHT, II**
22 **UNITED STATES DISTRICT JUDGE**