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

CARPENTERS SOUTHWEST ADMINISTRATIVE CORPORATION, a California non-profit corporation; and BOARD OF TRUSTEES FOR THE CARPENTERS SOUTHWEST TRUSTS

Plaintiffs,
v.

ACL BUILDERS, INC., a California corporation,

Defendant.

Case No. CV 12-04883-ODW(JEMx)

ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR DEFAULT JUDGMENT [13]

I. INTRODUCTION

Plaintiffs Carpenters Southwest Administrative Corporation and Board of Trustees for the Carpenters Southwest Trusts move the Court to enter default judgment against Defendant ACL Builders, Inc.¹ (ECF No. 13.) For the following reasons, the Court **GRANTS in part** and **DENIES in part** Plaintiffs' motion.

II. FACTUAL BACKGROUND

On June 12, 2012, Plaintiffs filed a Complaint in this Court alleging two claims against ACL for (1) damages for failure to pay fringe benefit contributions; and (2)

¹ Having carefully considered the papers filed in support of the instant Motion, the Court deems this matter appropriate for decision without oral argument. *See* Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15

1 injunctive relief. (Compl. 1.) Plaintiffs served ACL with the Summons and Complaint
2 on June 22, 2012. (ECF No. 9, Gifford Decl. ¶ 3, Ex. 3.) After ACL failed to appear or
3 otherwise respond to the complaint, Plaintiffs requested an entry of default on the
4 case, which the Clerk of Court entered according to Federal Rule of Civil Procedure
5 Rule 55(a) on July 12, 2012. (ECF Nos. 9, 10.) Plaintiffs now move for default
6 judgment. (ECF No. 13.)

7 This action arises out of ACL’s alleged failure to pay fringe-benefit
8 contributions. Plaintiff Carpenters Southwest Administrative Corporation (“CSAC”)
9 is a non-profit corporation that administers various multiemployer plan trusts.
10 (Compl. ¶¶ 6, 9.) CSAC is also assignee of various express trusts under section 302 of
11 the Labor Management Relations Act, 29 U.S.C. § 186, and therefore is the plan
12 fiduciary. (*Id.*) Plaintiff Board of Trustees for the Carpenters Southwest Trusts
13 (“Trustees”) are the acting trustees of the ERISA trusts administered by CSAC.
14 (Compl. ¶ 3) Additionally, Southwest Regional Council of Carpenters and its affiliated
15 local unions associated with the United Brotherhood of Carpenters and Joiners of
16 America (collectively, the “Unions”) are labor organizations and parties to the
17 collective bargaining agreements involved in this case. (*Id.* ¶ 11.) ACL is a contractor
18 engaged in the construction industry. (*Id.* ¶ 12.)

19 In July of 2003, ACL contracted with the Unions to report the number of the
20 hours worked by each employee and pay fringe-benefit contributions for each hour
21 worked according to predetermined amounts. (*Id.* ¶¶ 15–17.) This agreement
22 provides a penalty for failure to report and pay contributions by the 25th of the
23 month following the work logged. (*Id.*) The multiemployer plans administered by
24 CSAC are third-party beneficiaries of this agreement. (*Id.* ¶ 15.) CSAC and Trustees
25 allege that ACL failed to report hours and make contributions required under the
26 agreement. (*Id.* ¶¶ 19, 20.)

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1 **III. LEGAL STANDARD**

2 Federal Rule of Civil Procedure 55(b) permits a court-ordered default judgment
3 following the Clerk’s entry of default under Rule 55(a). Federal Rule of Civil
4 Procedure 55(b) and Local Rule 55-1 require that applications for default judgment
5 set forth (1) when and against what party the default was entered; (2) the
6 identification of the pleadings to which the default was entered; and (3) that notice
7 has been served on the defaulting party, if required by Rule 55(b)(2).²

8 The district court is given discretion to decide whether to enter a default
9 judgment. *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). Upon default, the
10 defendant’s liability generally is conclusively established, and the well-pleaded
11 factual allegations in the complaint—except those pertaining to damages—are
12 accepted as true. *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917–19 (9th Cir.
13 1987) (per curiam) (citing *Geddes v. United Fin. Group*, 559 F.2d 557, 560 (9th Cir.
14 1977)). But in exercising its discretion regarding entry of default, a court must
15 consider several factors, including: (1) the possibility of prejudice to plaintiff; (2) the
16 merits of plaintiff’s substantive claim; (2) the sufficiency of the complaint; (4) the
17 sum of money at stake in the action; (5) the possibility of a dispute concerning
18 material facts; (6) whether the defendant’s default was due to excusable neglect;
19 and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring
20 decisions on the merits. *Eitel v. McCool*, 782 F.2d 1470, 1471–72 (9th Cir. 1986).

21 **IV. DISCUSSION**

22 Plaintiffs’ Motion for Default Judgment seeks judgment as to liability and an
23 award of damages for failure to pay fringe benefit contributions amounting to
24 \$45,436.78, pre-judgment interest in the amount of \$11,951.74, and attorney’s fees
25 in the amount of \$3,326.21. Plaintiffs also seek injunctive relief requiring compliance
26 with the Agreement. The Court considers each in turn.

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28 ² Because ACL is not a person, the Court does not consider whether the defaulting party is incompetent or falls under the Service Member’s Relief Act.

1 **A. Liability**

2 Plaintiffs have satisfied the procedural requirements for default judgment
3 pursuant to Federal Rule of Civil Procedure 55(a) and Local Rule 55-1. Specifically,
4 Plaintiffs have established that (1) the clerk entered default against ACL on July 12,
5 2012; (2) the default is based on ACL's failure to respond to Plaintiffs' Complaint
6 served on June 16, 2012 (ECF No. 6); and (3) Plaintiffs served ACL with notice of their
7 application for default judgment by delivering a copy of the Motion and all
8 supporting documents to ACL's business addresses.

9 Upon entry of default, "well-pled allegations in the complaint regarding
10 liability are deemed true." *Fair Housing of Marin v. Combs*, 285 F.3d 899, 906 (9th
11 Cir. 2002). Moreover, the Court finds that consideration of the *Eitel* factors weigh in
12 favor of granting the motion. *See Eitel*, 782 F.2d at 1471-72. Specifically, Plaintiffs
13 would suffer prejudice if default judgment is not entered because Plaintiffs "would
14 be denied the right to judicial resolution of the claims presented, and would be
15 without other recourse for recovery." *Electra Entm't Grp., Inc. v. Crawford*, 226
16 F.R.D. 388, 392 (C.D. Cal. 2005). Plaintiffs have established the merits of their claims
17 and the sufficiency of the Complaint through its pleading and evidence. The sum of
18 money is not disproportionately large because the damages awarded are governed
19 by statute. *See* 29 U.S.C § 1132(g) (establishing what damages shall be awarded
20 under an ERISA plan). Finally, the Court finds that ACL's failure to answer or file a
21 responsive pleading was not the result of excusable neglect because ACL failed to
22 respond despite repeated notice of this action. (ECF Nos. 6, 9, 13-17, 19.)

23 Accordingly, Plaintiffs' Motion for Default Judgment is **GRANTED** as to liability
24 for ACL's failure to pay fringe benefit contributions.

25 **B. Statutory Damages**

26 Where judgment has been granted in favor of a plan, statutory damages under
27 29 U.S.C. § 1132(g)(2) are "mandatory and not discretionary." *Nw. Admin., Inc. v.*
28 *Albertson's, Inc.*, 104 F.3d 253, 257 (9th Cir. 1996). Section 1132(g)(2) provides that,

1 following entry of judgment in favor of the plan, the Court *shall* award the plan (A)
2 unpaid contributions; (B) interest on the unpaid contributions; (C) either interest on
3 the contributions again or liquidated damages provided under the plan; (D)
4 reasonable attorney’s fees and costs; and (E) such other legal and equitable relief the
5 Court deems appropriate. Plaintiffs have satisfied their burden of proof on these
6 damages with declarations, signed contracts, and hour reports showing delinquent
7 payments, as described below. (Petersen Decl., Exs. 1, 6, 7.)

8 1. *Unpaid contributions*

9 Plaintiffs list the four months of insufficient payments in 2010—January,
10 February, March, and August—totaling to \$27,476.94 in unpaid contributions
11 (Petersen Suppl. Decl. Ex. 7.) For 2011, they note that no payments were received
12 from June through November, totaling \$17,959.84 in unpaid contributions. (*Id.*)
13 These combined amounts come to **\$45,436.78**.

14 2. *Interest on unpaid contributions*

15 The total amount of interest owing on ACL’s payments is calculated according
16 to ACL’s agreement with Unions. (Petersen Decl. ¶ 21.) The agreement applies a
17 7% interest per annum on delinquent payments. (*Id.*) The total amount of interest
18 on \$45,436.78 calculated at 7% is **\$5,975.87**.

19 3. *Double interest under 29 U.S.C. § 1132(g)(2)(C)*

20 Under § 1132(g)(2)(C), Plaintiffs are entitled to either the amount of liquidated
21 damages provided for in the agreement or an additional award of the interest
22 accrued, whichever is greater. ACL’s agreement with Unions provides for liquidated
23 damages at 10% of the delinquent payments, which comes to \$4,543.68. (Petersen
24 Decl. ¶ 21.) As established above, the interest is \$5,975.87. The interest being
25 greater, the Court must award Plaintiff a second interest award of **\$5,975.87**.

26 4. *Attorney’s fees*

27 Local Rule 55-3 states that where a statute provides for reasonable attorney’s
28 fees, those fees must be calculated according to the schedule provided under that

1 Rule. The total delinquency here is \$45,436.78. Local Rule 55-3's schedule
2 establishes that where the amount of judgment is \$10,000.01 to \$50,000, attorney's
3 fees are calculated at \$1,200 plus 6% of the amount over \$10,000. This amounts to
4 **\$3,326.21.**

5 As to subsection (E), other legal and equitable relief, Plaintiffs have requested
6 injunctive relief. This will be discussed below. At this point, the Court **GRANTS**
7 Plaintiffs requests under § 1132(g)(2)(A)–(D) as described above, totaling to
8 **\$60,714.73.**

9 **C. Injunctive Relief**

10 Plaintiffs seek injunctive relief to coerce ACL to comply with its contractual
11 duty to make the required payments and file the necessary reports. To obtain
12 injunctive relief, Plaintiffs must establish that (1) Plaintiffs have suffered an
13 irreparable injury; (2) remedies available at law, such as monetary damages, are
14 inadequate to compensate for that injury; (3) considering the balance of hardships
15 between Plaintiffs and ACL, a remedy in equity is warranted; and (4) the public
16 interest would not be disserved by a permanent injunction. *eBay Inc. v.*
17 *MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006)

18 This Court is not inclined to grant injunctive relief in this case. By their request
19 for an injunction, Plaintiffs seek a court order requiring Defendants to comply with
20 their legal obligations under the added threat of being held in contempt of court.
21 But Plaintiffs already have a more-than-adequate remedy at law to enforce
22 Defendants' obligations, as illustrated by the Court's present grant of default
23 judgment. Plaintiffs simply have not suffered an irreparable injury because the
24 damages the Court awards them here—and could award them in any future
25 proceeding—fully remedy Defendants' violations and cover Plaintiffs' reasonable
26 attorney's fees. And without a showing that Plaintiffs have suffered an irreparable
27 injury, the threat of criminal penalties for violation of a legal duty is unwarranted.

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1 In a feeble attempt to establish irreparable injury, Plaintiffs claim ACL's failure
2 to make timely contributions may effectively result in another employer (or the
3 participants) having to pay for the delinquency. (See Petersen Decl. ¶ 20.) They
4 assert that this is because the Plan's contribution rates and benefits are based on
5 actuarial calculations, but they do not state how much the damage is or the relative
6 certainty of any such damage occurring at all. To the contrary, Plaintiffs' claim is
7 speculative and equivocal, and insufficient to warrant the requested relief.

8 In this first suit against ACL for unpaid contributions, the monetary damages
9 awarded above are adequate. Accordingly, Plaintiffs' Motion for Default Judgment is
10 **DENIED** with respect to injunctive relief.

11 **V. CONCLUSION**

12 For the foregoing reasons, the Court **GRANTS** Plaintiffs' Motion for Default
13 Judgment with respect to unpaid contributions, interest, double interest under 29
14 U.S.C. 1132(g)(2)(C), and attorney's fees, for a total of \$60,714.73 in damages. The
15 Court **DENIES** Plaintiffs' Motion with respect to injunctive relief. A judgment will
16 issue.

17 **IT IS SO ORDERED.**

18
19 October 17, 2012

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