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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BOARD OF DIRECTORS OF THE)
MOTION PICTURE INDUSTRY)
PENSION PLAN; BOARD OF)
DIRECTORS OF THE MOTION)
PICTURE INDUSTRY INDIVIDUAL)
ACCOUNT PLAN; BOARD OF)
DIRECTORS OF THE MOTION)
PICTURE INDUSTRY HEALTH)
PLAN,)
)
Plaintiffs,)
)
v.)
)
THE REVOLVER FILM COMPANY)
U.S.A. LIMITED,)
)
Defendant.)

CV 16-5295-RSWL-Ex

**ORDER re: Plaintiffs'
Motion for Entry of
Default Judgment [30]**

Currently before the Court is Plaintiffs Board of Directors of the Motion Picture Industry Pension Plan; Board of Directors of the Motion Picture Industry Individual Account Plan; and Board of Directors of the Motion Picture Industry Health Plan's ("Plaintiffs" or the "Plans") Motion for Entry of Default Judgment

1 ("Motion" or "Motion for Default Judgment") against
2 Defendant The Revolver Film Company U.S.A. Limited
3 ("Defendant") [30]. Having reviewed all papers
4 submitted pertaining to this Motion, the Court **NOW**
5 **FINDS AND RULES AS FOLLOWS:** the Court **GRANTS**
6 Plaintiffs' Motion and enters default judgment as to
7 all claims in the Complaint [1].

8 I. BACKGROUND

9 A. Factual Background

10 Plaintiffs are the Board of Directors of the Motion
11 Picture Industry Pension Plan, the Motion Picture
12 Industry Individual Account Plan, and the Motion
13 Picture Industry Health Plan. Compl. ¶ 3, ECF No. 1.
14 The Plans were established pursuant to collective
15 bargaining agreements between entertainment industry
16 employers and IATSE.¹ Id. at ¶ 4.

17 The Plans are employee welfare benefit and pension
18 plans within the meaning of the Employee Retirement
19 Income Security Act of 1974 ("ERISA") § 3(1)(29 U.S.C.
20 § 1002(1)) and § (3)(2)(29 U.S.C. § 1002(2)), and are
21 multi-employer plans within the meaning of ERISA §
22 3(37)(A)(29 U.S.C. § 1002(37)(A)) and § 515 (29 U.S.C.
23 § 1145). Id. The Plans are subject to the provisions
24 of section 302(c)(5)(29 U.S.C. § 186(c)(5)) of the
25 Labor-Management Relations Act of 1947 ("LMRA"). Id.

27 ¹ International Alliance of Theatrical Stage Employees and
28 Moving Picture Machine Operators of the United States and Canada
is an unincorporated labor organization. Id.

1 at ¶ 3.

2 Defendant is a Delaware corporation authorized to
3 transact business within California. Id. at ¶ 5. It
4 is currently under California Franchise Tax Board
5 ("FTB") suspension and "Void, AR's or Tax Delinquent"
6 status with the Delaware Division of Corporations. Id.

7 Defendant signed Consent Agreements with the IATSE,
8 agreeing to be bound by the 2003 Music Video Production
9 Agreement and successor agreements. Defendant also
10 signed Consent Agreements with the Studio
11 Transportation Drivers Local 399 ("Local 399"),
12 agreeing to be bound by the Teamsters Music Video
13 Agreement and subsequent extensions. Id. at ¶¶ 7, 9,
14 Ex. 1.

15 Pursuant to these agreements, Defendant executed
16 IATSE and Local 399 Trust Acceptances, agreeing to be
17 bound by all terms and conditions of the Trust
18 Agreements establishing the Plans ("Trust Agreements").
19 Id. at ¶ 10, Ex. 4. The Trust Agreements obligate
20 Defendant to submit a report and pay contributions on a
21 weekly basis to the Plans for each hour worked or
22 guaranteed to employees, including straight-time and
23 overtime hours. Id. at ¶ 12.

24 The Trust Agreements provide payment procedures for
25 delinquent contributions to the Plans. Contributions
26 are delinquent if they are not received within five
27 days from the date such contributions become due. Id.;
28 Decl. of Chris Tashchyan ("Tashchyan Decl.") ¶ 8A; Ex.

1 5, pp. 35-36; Ex. 6, pp. 42-44; Ex. 7, pp. 48-49, ECF
2 Nos. 30-2, 30-7. The Trust Agreements provide for the
3 assessment of interest on delinquent contributions at
4 the rate of one percent (1%) per month, commencing when
5 payment was due and continuing to the date when payment
6 is made. Compl. ¶ 14; Tashchyan Decl. ¶ 8E; Ex. 5, p.
7 36; Ex. 6, p. 42; Ex. 7, p. 49. In addition, the Trust
8 Agreements require payment of liquidated damages for
9 delinquent contributions.² Compl. ¶ 13; Tashchyan Decl.
10 ¶ 8F; Ex. 5, pp. 36-37; Ex. 6, p. 36; Ex. 7, pp. 49-50.
11 Finally, in the event of a delinquency, employers are
12 liable for all expenses of collection/enforcement,
13 including all costs, reasonable accountant's fees,
14 auditor's fees, and attorney's fees. Compl. ¶ 14;
15 Tashchyan Decl. ¶¶ 8C-D; Ex. 5, p. 37; Ex. 6, p. 45;
16 Ex. 7, pp. 50, 52. Should an audit reveal a
17 delinquency or underpayment, the employer shall bear
18 the costs of the audit. Tashchyan Decl. ¶ 8C; Ex. 5,
19 p. 39; Ex. 6, p. 45; Ex. 7, p. 52.

20 On August 17, 2012, Plaintiffs completed an audit
21 of Defendant's records which revealed that, from the
22 period of January 4, 2004 to April 5, 2008, Defendant
23 failed to report and pay contributions to the Plans
24 totaling \$12,066.19. Compl. ¶¶ 15-16; Tashchyan Decl.
25 ¶ 9, Ex. 8.

26 _____

27 ² The amount of liquidated damages is the greater of either:
28 (1) twenty percent (20%) of all unpaid contributions; or (2) the
amount of interest due on the date when payment is made, in
addition to interest due on the unpaid contributions. Id.

1 **B. Procedural Background**

2 Plaintiffs filed a Complaint against Defendant on
3 July 18, 2016, alleging two claims: (1) breach of the
4 contract for failure to report and pay contributions to
5 the Plans from January 4, 2004 to April 5, 2008
6 pursuant to the Trust Agreements; and (2) violation of
7 ERISA § 515 (29 U.S.C. § 1145) for failure to
8 accurately report and pay contributions to the Plans.
9 Compl. ¶¶ 15, 16, 23.

10 Plaintiffs seek the following damages from
11 Defendant: (1) \$12,066.19 for unpaid contributions from
12 January 4, 2004 to April 5, 2008; (2) \$14,459.91
13 interest (through May 31, 2017); (3) \$14,459.91
14 liquidated damages (through May 31, 2017); (4) audit
15 fees for the August 17, 2012 audit totaling \$6,255.00;
16 (5) attorneys' fees of \$8,757.50; and (6) litigation
17 costs of \$825.50.

18 Plaintiffs were unable to effect service of process
19 on Defendant's listed address on August 1, 2016, as the
20 address was a rental house and the current occupant did
21 not know Defendant. Decl. of Elizabeth Rosenfeld re
22 OSC re Failure to Prosecute ("First Rosenfeld Decl.")
23 Ex. 1, ECF. No. 12-1.

24 Plaintiffs repeatedly attempted to serve Defendant
25 at business addresses in California and Delaware. On
26 September 7, 2016, Plaintiffs were unable to effect
27 service of process in Delaware because The Corporation
28 Trust Company, Defendant's agent for service of process

1 listed with the Delaware Division of Corporations, had
2 not been an active agent for service of process since
3 March 1, 2009. Id. at Ex. 2. Plaintiffs made two
4 additional attempts to serve Defendant at its last-
5 known business address in October 2016. Id. at Ex. 3.
6 Both attempts failed because Defendant apparently moved
7 out six months prior. Id.

8 On October 27, 2016, the Court granted Plaintiffs a
9 60-day extension to complete service of the Summons and
10 Complaint [14]. Plaintiffs were still unable to locate
11 Defendant or its agent for service of process. The
12 Court allowed Plaintiffs to effect service of process
13 by personally serving the California Secretary of
14 State, pursuant to California Corporations Code §§
15 2111(a), 2114(c) [17]. Plaintiffs completed service of
16 the Summons via the California Secretary of State on
17 December 28, 2016 [18]. Defendant did not file an
18 answer, which was due on January 18, 2017 [18].

19 Plaintiffs requested that the Clerk enter default
20 against Defendant, which the Clerk did on February 1,
21 2017 [19, 20]. On May 5, 2017, the Court denied
22 Defendant's Motion to Set Aside Default [29].
23 Plaintiffs filed this Motion for Default Judgment on
24 June 9, 2017 [30]. Defendant did not respond.

25 **II. DISCUSSION**

26 **A. Legal Standard**

27 The granting of default judgment is within the
28 discretion of the district court. Aldabe v. Aldabe,

1 616 F.2d 1089, 1092 (9th Cir. 1980); see Fed. R. Civ.
2 P. 55. Procedural and substantive requirements must be
3 satisfied.

4 Procedurally, the requirements set forth in Federal
5 Rules of Civil Procedure 54(c) and 55(b), and Local
6 Rule 55-1 must be met. See Vogel v. Rite Aid Corp.,
7 992 F. Supp. 2d 998, 1006 (C.D. Cal 2014). Local Rule
8 55-1 provides: "When an application is made to the
9 Court for a default judgment, the application shall be
10 accompanied by a declaration in compliance with
11 F.R.Civ.P. 55(b)(1) and/or (2) and include the
12 following: (a) When and against what party the default
13 was entered; (b) The identification of the pleading to
14 which default was entered; (c) Whether the defaulting
15 party is an infant or incompetent person, and if so,
16 whether that person is represented by a general
17 guardian, committee, conservator or other
18 representative; (d) That the Service Members Civil
19 Relief Act, 50 U.S.C. App. § 521, does not apply; and
20 (e) That notice has been served on the defaulting
21 party, if required by F.R.Civ.P. 55(b)(2)." L.R. 55-1.

22 Courts should also consider the following factors
23 in determining whether to grant a motion for default
24 judgment: "(1) the possibility of prejudice to
25 plaintiff, (2) the merits of plaintiff's substantive
26 claims, (3) the sufficiency of the complaint, (4) the
27 sum of money at stake in the action, (5) the
28 possibility of a dispute concerning the material facts,

1 (6) whether defendant's default was the product of
2 excusable neglect, and (7) the strong public policy
3 favoring decisions on the merits." Eitel v. McCool,
4 782 F.2d 1470, 1471-72 (9th Cir. 1986).

5 If the court determines that the defendant is in
6 default, "the factual allegations of the complaint,
7 other than those relating to damages, are taken as
8 true.'" Televideo Sys., Inc. v. Heidenthal, 826 F.2d
9 915, 917-18 (9th Cir. 1987) (quoting Geddes v. United
10 Fin. Group, 559 F.2d 557, 560 (9th Cir. 1977)).

11 Additionally, "[w]hen entry of judgment is sought
12 against a party who has failed to plead or otherwise
13 defend, a district court has an affirmative duty to
14 look into its jurisdiction over both the subject matter
15 and the parties." In re Tuli, 172 F.3d 707, 712 (9th
16 Cir. 1999).

17 If the Court determines that the allegations in the
18 complaint are sufficient to establish liability, the
19 plaintiff must provide proof of all damages sought in
20 the complaint, and the Court must determine the "amount
21 and character" of the relief that should be awarded.
22 Vogel, 992 F. Supp. 2d at 1005-06. "A default judgment
23 must not differ in kind from, or exceed in amount, what
24 is demanded in the pleadings." Fed. R. Civ. P. 54(c).

25 **B. Analysis**

26 1. Jurisdiction and Service of Process

27 In considering whether to enter default judgment
28 against Defendant, the Court must first determine

1 whether it has jurisdiction over the subject matter and
2 the parties to the case. In re Tuli, 172 F.3d at 712.

3 The Court has subject matter jurisdiction over this
4 action because ERISA § 502(e)(1)(29 U.S.C. §
5 1132(e)(1)) gives district courts "exclusive
6 jurisdiction" over ERISA actions brought by plan
7 fiduciaries like Plaintiffs. Compl. ¶ 4; Cripps v.
8 Life Ins. Co. of Am., 980 F.2d 1261, 1265 (9th Cir.
9 1992)(section 1132 "expressly authorize[s]" plan
10 fiduciaries "to bring claims in federal court").

11 The Court also has personal jurisdiction because
12 fiduciaries may bring an ERISA enforcement action
13 "where the plan is administered, where the breach took
14 place, or where a defendant resides or may be found,
15 and process may be served in any other district where a
16 defendant resides or may be found." ERISA § 502(e)(2)
17 (29 U.S.C. § 1132(e)(2)). Here, the Plans are
18 administered in Studio City, California, so the Court
19 can exercise personal jurisdiction over Defendant, who
20 is incorporated in Delaware. Compl. ¶ 4; Tr. of ILWU-
21 PMA Pension Plan v. Coates, No. C-11-3998 EMC, 2013 WL
22 556800, at *4 (N.D. Cal. Feb. 12, 2013)(per section
23 1132(e)(2), "a court may exercise personal jurisdiction
24 over a defendant anywhere in the United States,
25 regardless of the state in which the court sits").
26 Even under traditional personal jurisdiction
27 principles, the Court likely has personal jurisdiction
28 over Defendant because Defendant was formerly

1 authorized to transact business within the State of
2 California. Compl. ¶ 5.

3 Service of process is also satisfied. A
4 corporation may be served pursuant to California state
5 law. See Fed. R. Civ. P. 4(h)(1)(A). Per California
6 law, when the agent for service of process cannot be
7 found, then service may be affected by the California
8 Secretary of State. Cal. Corp. Code § 2111. After
9 multiple attempts to serve Defendant at various
10 locations including Defendant's listed address,
11 Defendant's business addresses in California and
12 Delaware, and on Defendant's agent for service of
13 process, Plaintiffs completed service of the Summons
14 and Complaint via the California Secretary of State on
15 December 28, 2016 [18].

16 2. Procedural Requirements

17 Plaintiffs have met the procedural requirements for
18 default judgment pursuant to Federal Rules of Civil
19 Procedure ("FRCP" or "Rule") 55 and Central District
20 Local Rule 55-1.³ Under Rule 55(a), the Clerk properly
21 entered default against Defendant on February 1, 2017
22 [20]. Plaintiffs moved pursuant to Rule 55(b) for
23 entry of default judgment on June 9, 2017 [30].

24
25 ³ Local Rule 55-1 sets forth additional requirements in an
26 application for default judgment: (1) when and against what party
27 the default was entered; (2) the identification of the pleading
28 to which default was entered; (3) whether the defaulting party is
an infant or incompetent person; (4) that the Servicemembers
Civil Relief Act does not apply; and (5) notice has been served
on the defaulting party.

1 Plaintiffs have also satisfied the Local Rule 55-1
2 requirements. The Clerk of Court entered default
3 against Defendant as to the entire Complaint on
4 February 1, 2017 [20]. Defendant is not an infant,
5 incompetent person, or exempted under the Soldiers' and
6 Sailors' Civil Relief Act of 1940, the predecessor to
7 the Servicemembers Civil Relief Act. Ntc. of Mot. for
8 Default J. ("Ntc.") 1:12-14. Lastly, Plaintiffs served
9 Defendant with notice of this Motion on June 9, 2017.
10 Proof of Service, ECF No. 31.

11 3. Eitel Factors

12 The Eitel factors weigh in favor of Plaintiffs
13 because they have sufficiently set forth "(1) the
14 possibility of prejudice to plaintiffs; (2) the merits
15 of plaintiffs' substantive claims; (3) the sufficiency
16 of the complaint; (4) the sum of money at stake in the
17 action; (5) the possibility of a dispute concerning the
18 material facts; (6) whether defendants' default was the
19 product of excusable neglect; and (7) the strong public
20 policy favoring decisions on the merits." Eitel, 782
21 F.2d at 1471-72.

22 a. *Risk of Prejudice to Plaintiffs*

23 The first Eitel factor considers whether a
24 plaintiff will suffer prejudice if default judgment is
25 not entered. Vogel, 992 F. Supp. 2d at 1007. Given
26 Defendant's refusal to pay the sums due, Plaintiffs
27 will suffer prejudice because they "will likely be
28 without other recourse for recovery" if default

1 judgment is not entered. Accord PepsiCo, Inc. v. Cal.
2 Sec. Cans, 238 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002);
3 Bd. of Trs. v. Kym Mech., No. C 09-05944 RS, 2010 WL
4 3749409, at *3 (N.D. Cal. Sept. 23, 2010)(ERISA
5 fiduciaries would risk prejudice absent entry of
6 default judgment because they could only recoup unpaid
7 damages and interest through the trust plans, which
8 were breached). This factor favors entry of default
9 judgment.

10 b. *Sufficiency of the Complaint and*
11 *Likelihood of Success on the Merits*

12 The second and third Eitel factors consider the
13 merits of the plaintiff's substantive claims and the
14 sufficiency of the complaint. "Under an [Eitel]
15 analysis, [these factors] are often analyzed together."
16 Dr. JKL Ltd. v. HPC IT Educ. Ctr., 749 F. Supp. 2d
17 1038, 1048 (N.D. Cal. 2010).

18 As a threshold matter, Plaintiffs have standing to
19 enforce LMRA § 301(a)(29 U.S.C. § 185(a))⁴ and ERISA §
20 515 (29 U.S.C. § 1145). LMRA section 301 allows third
21 party beneficiaries to enforce an employer-labor
22 organization agreement. See Audit Servs., Inc. v.
23 Rolfson, 641 F.2d 757, 760 (9th Cir. 1981).

24
25 ⁴ "Suits for violation of contracts between an employer and
26 a labor organization representing employees in an industry
27 affecting commerce as defined in this chapter, or between any
28 such labor organizations, may be brought in any district court of
the United States having jurisdiction of the parties, without
respect to the amount in controversy or without regard to the
citizenship of the parties."

1 Additionally, Plaintiffs have standing to assert their
2 claims under ERISA. See Laborers Health & Welfare
3 Trust Fund v. Advanced Lightweight Concrete Co., 484
4 U.S. 539, 547 (1988) ("The liability created by [ERISA]
5 § 515 may be enforced by the trustees of a plan by
6 bringing an action in federal court"). Thus,
7 Plaintiffs are entitled to enforce the Trust Agreements
8 against Defendant.

9 Plaintiffs' Action is also timely under the
10 relevant statute of limitations. ERISA actions where a
11 fiduciary seeks to recover unpaid contributions to a
12 plan will borrow the forum state's statute of
13 limitations for breach of contract claims. Here, the
14 applicable statute of limitations for breach of
15 contract under California law is four years. N.W.
16 Adm'rs, Inc. v. Ad Auto. Distribs. Inc., No. C-05-2880
17 SC, 2006 WL 1626940, at *3 (N.D. Cal. June 12, 2006).
18 The statute of limitations begins to run "when a
19 plaintiff knows or has reason to know of the injury . .
20 . ." Id. at *4 (citation omitted). Plaintiffs knew or
21 had reason to know of Defendant's breach after
22 completing the August 17, 2012 audit. Tashchyan Decl.
23 ¶¶ 9-10. Thus, the Action was timely filed within four
24 years by July 18, 2016 [1]. Id. (complaint was filed
25 within four years of the audit that had revealed unpaid
26 pension contributions).

27 Moreover, Plaintiffs have pled meritorious claims
28 for (1) violation of the Agreements and Trust

1 Agreements; and (2) violation of ERISA § 515 (29 U.S.C.
2 § 1145).

3 i. *Breach of Trust Agreements*

4 Defendant has violated the Trust Agreements. The
5 Trust Agreements obligated Defendant, as an employer,
6 to pay contributions to the Plans for employees, to
7 prepare a single, combined weekly remittance report,
8 and to pay associated fees for delinquent payments.
9 Tashchyan Decl. ¶¶ 8A-F. The Trust Agreements also
10 require the employer to bear the costs of any audit or
11 inspection that discloses a "delinquency underpayment,
12 or other erroneous reporting." Tashchyan Decl. ¶ 8C;
13 Ex. 5, p. 39; Ex. 6, pp. 45-46; Ex. 7, p. 52.
14 Defendant breached these terms when the audit revealed
15 it had failed to report and pay contributions from
16 January 4, 2004 to April 5, 2008, totaling \$12,066.19.
17 Compl. ¶¶ 15, 16. Defendant committed a further breach
18 by failing to pay for the \$6,255.00 audit. See id. at
19 ¶ 17. Plaintiffs have sufficiently alleged a
20 contractual obligation to make contributions, to
21 finance the audit, and a subsequent breach.

22 ii. *Violation of ERISA § 515*

23 Plaintiffs have also stated a claim for violation
24 of ERISA § 515 (29 U.S.C. § 1145). Section 515 allows
25 plan fiduciaries to enforce obligations created under a
26 collective bargaining agreement against employers who
27 fail to make contributions to employee benefit plans.
28 29 U.S.C. § 1145; Bd. of Tr. of U.A. v. RT/DT, Inc.,

1 No. C 12-05111 JSW, 2013 WL 2237871, at *4 (N.D. Cal.
2 May 21, 2013). To successfully assert this claim,
3 Plaintiffs must prove: (1) the Trusts are
4 multi-employer plans; (2) the collective bargaining
5 agreement obligated Defendant to make employee benefit
6 contributions; and (3) Defendant failed to make the
7 contribution payments. Id.

8 These requirements are satisfied. Here, the Plans
9 are "multi-employer plans" falling within ERISA §
10 3(37)(A)(29 U.S.C. § 1002(37)(A)). Compl. ¶ 4. Also,
11 the Trust Agreements obligated Defendant to make
12 contributions for total hours worked by or guaranteed
13 to all employees covered by the agreements by the last
14 day of the week following the week in which work was
15 performed. Id. at ¶ 12; Tashchyan Decl. ¶ 8A. Lastly,
16 as the audit revealed, Defendant failed to make the
17 requisite contribution payments between January 4, 2004
18 and April 5, 2008. Compl. ¶¶ 15-16; Tashchyan Decl. ¶
19 9, Ex. 8. To date, Defendant has also failed to pay
20 liquidated damages, interest, and audit fees. Compl. ¶
21 23; Tashchyan Decl. ¶ 13. Thus, Plaintiffs have stated
22 a meritorious ERISA § 515 claim.

23 c. *Sum of Money at Stake in the Action*

24 "Under the [fourth] Eitel factor, the court must
25 consider the amount of money at stake in relation to
26 the seriousness of Defendant's conduct." PepsiCo, 238
27 F. Supp. 2d at 1176. "While the allegations in a
28 complaint are taken to be true for the purposes of

1 default judgment, courts must make specific findings of
2 fact in assessing damages." Moroccanoil, Inc. v.
3 Allstate Beauty Prod., Inc., 847 F. Supp. 2d 1197, 1202
4 (C.D. Cal. 2012).

5 Plaintiffs request \$12,066.19 for contributions
6 owed between January 4, 2004 and April 5, 2008;
7 \$14,459.91 for interest accrued through May 31, 2017;
8 \$14,459.91 for liquidated damages accumulated through
9 May 31, 2017; audit fees of \$6,255.00 for the August
10 17, 2012 audit; \$8,757.50 for attorneys' fees; and
11 \$825.50 for litigation costs, totaling \$56,824.01.
12 Ntc. 2:1-8.

13 These amounts are all authorized under the Trust
14 Agreements, which require weekly contributions to the
15 Plans, 1% monthly interest on unpaid contributions,
16 liquidated damages on top of the interest, costs of an
17 audit that revealed a delinquency, attorneys' fees for
18 enforcing the Trust Agreements, and related litigation
19 costs. Tashchyan Decl. ¶¶ 8A-F. Plaintiffs' evidence
20 substantiates the requested \$56,824.01 total, rendering
21 the sum of money at stake "appropriately tailored to
22 [Defendant's] specific misconduct in failing to make
23 timely contribution payments." RT/DT, Inc., 2013 WL
24 2237871, at *5. Lastly, the remedies set forth in the
25 Trust Agreements are also authorized by ERISA §
26 502(g)(2) (29 U.S.C. § 1132(g)(2)), which require a
27 delinquent employer to pay for unpaid contributions,
28 liquidated damages, interest at the rate of 1% per

1 month, auditors fees, relevant attorneys' fees, and
2 litigation costs. As such, the sum of money at stake
3 is appropriate and counsels towards entering default
4 judgment.

5 d. *Possibility of Dispute Concerning a*
6 *Material Fact*

7 The fifth Eitel factor examines the likelihood of a
8 dispute between the parties regarding the material
9 facts surrounding the case. A defendant is "deemed to
10 have admitted all well-pleaded factual allegations" in
11 the Complaint upon entry of default. DirectTV, Inc. v.
12 Hoa Huynh, 503 F.3d 847, 851 (9th Cir. 2007).

13 Defendant has had sufficient time to oppose this
14 Motion since its filing on June 9, 2017 and the
15 deadline for filing an opposition in accordance with
16 Local Rule 7-9 has passed. Beyond arguing in its
17 Motion to Set Aside Default Judgment that it had a
18 meritorious defense under the applicable statute of
19 limitations [21-1], which the Court has disposed of in
20 supra Part II.B.3.b.ii, Defendant has not effectively
21 challenged whether it violated the Trust Agreements and
22 ERISA § 515 (29 U.S.C. § 1145). Considering this with
23 the fact that ERISA § 502(g)(2)(29 U.S.C. § 1132(g)(2))
24 and the Trust Agreements are clear as to both parties'
25 obligations in the event of a breach of the collective
26 bargaining agreements, the Court finds that any
27 material factual disputes are unlikely and this factor
28 weighs towards granting the motion for default

1 judgment.

2 e. *Possibility of Excusable Neglect*

3 This factor examines whether Defendant's failure to
4 respond to Plaintiffs' Complaint was the result of
5 excusable neglect. Eitel, 782 F.2d at 1472. As
6 explained in the Court's Order Denying Defendant's
7 Motion to Set Aside Default Judgment, Defendant did not
8 act with excusable neglect, as it had at least
9 constructive notice of the Action's pending filing
10 after it received a letter informing it of the unpaid
11 contributions and advising it that Plaintiffs would
12 file the attached Complaint but never responded. Order
13 re Mot. to Set Aside Default J. 7:20-8:8, ECF No. 29.
14 Because of Defendant's incorrectly listed addresses
15 (particularly those it no longer occupied) and
16 incorrectly listed agent for service of process, it
17 took Plaintiffs nearly five months to properly serve
18 Defendant. Defendant's apparent bad faith tactics and
19 its contribution to litigation delays make any
20 potential excusable neglect minimal. Thus, this factor
21 weighs towards entry of default judgment.

22 f. *Policy Favoring Deciding a Case on the*
23 *Merits*

24 The Ninth Circuit stated that "[c]ases should be
25 decided upon their merits whenever reasonably
26 possible." Eitel, 782 F.2d at 1472. However, "this
27 preference, standing alone, is not dispositive."
28 PepsiCo, 238 F. Supp. 2d at 1177. Because Defendant

1 has failed to participate meaningfully in this
2 litigation and has delayed a resolution on the merits,
3 a decision on the merits is not "reasonably possible"
4 at this juncture. Nevertheless, this factor weighs
5 against granting default judgment.

6 Six of the seven Eitel factors weigh in favor of
7 granting default judgment, and the Court enters default
8 judgment accordingly.

9 4. Character and Amount of Plaintiffs' Recovery

10 The Court now turns to Plaintiffs' requested
11 damages.

12 a. *Unpaid Contributions*

13 Plaintiffs seek unpaid contributions from January
14 4, 2004 to April 4, 2008, totaling \$12,066.19. To
15 corroborate the requested amount, Plaintiffs attach the
16 Declaration of Chris Tashchyan, the Plans' Manager of
17 Audit and Collections. Tashchyan Decl. ¶ 1. Mr.
18 Tashchyan oversees collection of contributions to the
19 Plans. Id. at ¶ 2. The Tashchyan Declaration and
20 attached exhibits thoroughly document the Plan sections
21 permitting recovery of delinquent contributions. Id.
22 at ¶ 8A. Plaintiffs also provide a spreadsheet from
23 the audit report detailing how they arrived at the
24 \$12,066.19 total by listing employees for whom
25 contributions were not reported or were underreported,
26 calculating their hourly contribution rates, and
27 calculating the period of time for which contributions
28 are owed for each employee for the requisite timeframe.

1 Id. at ¶ 10, Ex. 8; AD Automotive Distributors, 2006 WL
2 1626940, at *4-5 (awarding requested unpaid
3 contributions after plaintiff attached audit billing
4 report that summarized contributions owed to the trust
5 fund during relevant window).

6 b. *Liquidated Damages & Interest*

7 Plaintiffs seek liquidated damages totaling
8 \$14,459.91. The Ninth Circuit has clearly stated that
9 an award of liquidated damages under ERISA §
10 502(g)(2)(29 U.S.C. § 1132(g)(2)) is "mandatory and not
11 discretionary." Operating Eng'rs. Pension Trust v.
12 Beck Eng'g. & Surveying Co., 746 F.2d 557, 569 (9th
13 Cir. 1984). A plaintiff is entitled to a mandatory
14 liquidated damages award under § 1132(g)(2) if the
15 following requirements are met: (1) the fiduciary
16 obtains a judgment in favor of the plan; (2) unpaid
17 contributions exist at the time of the suit; and (3)
18 the plan provides for liquidated damages. Idaho
19 Plumbers & Pipefitters Health & Welfare Fund v. United
20 Mech. Contractors, Inc., 875 F.2d 212, 215 (9th Cir.
21 1989).

22 As set forth in supra Part II.B.3.b.i., the Trust
23 Agreements were violated, unpaid contributions were
24 owed when this Action was filed in July 2016, and, in
25 accordance with section 1132(g)(2), the Plans provide
26 for liquidated damages equal to the greater of: (1)
27 twenty percent (20%) of the amount of contributions
28 due; (2) or the amount of interest due on the date when

1 payment is made. Tashchyan Decl. Ex. 5, at 36-37; Ex.
2 6, at p. 36; Ex. 7, at pp. 49-50. The Plans also
3 provide that liquidated damages shall be in addition to
4 the interest due on the unpaid contributions. Id. The
5 Court finds that the \$14,459.91, which equals the
6 requested interest and is greater than 20% of the
7 \$12,066.19 in unpaid contributions, is the appropriate
8 amount due when payment had not been made as of May 31,
9 2017.

10 Plaintiffs also seek interest of \$14,459.91 on
11 unpaid contributions. "Under ERISA, Plaintiffs may
12 recover interest based on the rate set by the employee
13 benefit plan." AD Automotive Distributors, 2006 WL
14 1626940, at *5 (citing 29 U.S.C. § 1132(g)(2)(C)(i)).
15 Here, the Plans allow for interest "charged on the
16 amount of such [unpaid] contributions from the date
17 when payment was due to the date when payment was
18 made," at the interest rate of 1% per month. Tashchyan
19 Decl. ¶ 8E; Ex. 5, p. 36; Ex. 6, p. 42; Ex. 7, p. 49.
20 Moreover, the \$14,459.91 in interest—equal to the
21 requested \$14,459.91 in liquidated damages—is
22 permitted, as "[i]t is proper to award both liquidated
23 damages and interest if so provided in the agreement."
24 AD Automotive Distributors, 2006 WL 1626940, at *5.
25 And here, the Plans provide that interest "shall be in
26 addition to any liquidated damages. . . ." Tashchyan
27 Decl. Ex. 5, pp. 36-37; Ex. 6, p. 36; Ex. 7, pp. 49-50.
28 Thus, interest is proper.

1 c. *Audit Fees*

2 Plaintiffs are entitled to the requested audit
3 fees, totaling \$6,255.00, ntc. 2:5, as ERISA section
4 515 permits a plaintiff to recover audit costs. Tr. of
5 S. Cal. IBEW-NECA Pension Plan v. Gonzalez Elec., Inc.,
6 CV 07-01044 MMM (Shx), 2008 WL 11336220, at *5 (C.D.
7 Cal. Sept. 30, 2008)(citing Operating Eng'rs Pension
8 Trust v. A-C Co., 859 F.2d 1336, 1343 (9th Cir. 1988)).

9 d. *Attorneys' Fees and Litigation Costs*

10 Plaintiffs seek attorneys' fees totaling \$8,757.50
11 and costs of suit, totaling \$825.50. Central District
12 Local Rule 55-3 delineates a schedule of attorneys'
13 fees in the event of default judgment, if the
14 applicable statute provides for recovery of reasonable
15 attorneys' fees.⁵ Vogel, 992 F. Supp. 2d at 1016.

16 Per Local Rule 55-3, "[a]n attorney claiming a fee
17 in excess of this schedule may file a written request
18 at the time of entry of the default judgment to have
19 the attorney's fee fixed by the Court. The Court shall
20 hear the request and render judgment for such fee as
21 the Court may deem reasonable." Plaintiffs seek a
22 departure from Local Rule 55-3 and ask for \$8,757.50 in
23 attorneys' fees. Ntc. 2:6.

24 Attorneys' fees under ERISA § 502(g)(1)(29 U.S.C.
25 1132(g)(1)) "are calculated using the lodestar

26
27 ⁵ Here, the applicable statute, ERISA § 502(g)(2)(29 U.S.C.
28 § (g)(2)), allows for "reasonable attorneys' fees," rendering
Local Rule 55-3 applicable.

1 approach, which multipl[ies] the number of hours
2 reasonably expended by the attorney(s) on the
3 litigation by a reasonable hourly rate." McElwaine v.
4 U.S. W., Inc., 176 F.3d 1167, 1173 (9th Cir. 1999).
5 Then, the Court must determine if for any reason the
6 lodestar figure should be adjusted. Kerr v. Screen
7 Extras Guild, Inc., 526 F.2d 67, 70 (9th Cir. 1975),
8 abrogated on other grounds by City of Burlington v.
9 Dague, 505 U.S. 557 (1992).⁶

10 To determine whether the hourly rates are
11 reasonable, the Court can consider whether "the
12 requested rates are in line with those prevailing in
13 the community for similar services by lawyers of
14 reasonably comparable skill, experience, and
15 reputation." Tr. of the S. Cal. IBEW-NECA Pension Plan
16 et al. v. Electro Dynamic Servs., CV 07-05691 MMM
17 (PLAx), 2008 WL 11338230, at *5 (C.D. Cal. Oct. 14,
18 2008)(citing Blum v. Stenson, 465 U.S. 886, 895-96 n.11
19 (1984)). The "relevant community" here is the Central
20

21
22 ⁶ In Kerr, the Ninth Circuit found the following factors
23 important in determining whether attorney's fees are reasonable:
24 (1) the time and labor required; (2) the novelty and difficulty
25 of the questions involved; (3) the skill requisite to perform the
26 legal service properly; (4) the preclusion of other employment by
27 the attorney due to acceptance of the case; (5) the customary
28 fee; (6) whether the fee is fixed or contingent; (7) time
limitations imposed by the client or the circumstances; (8) the
amount involved and the results obtained; (9) the experience,
reputation, and ability of the attorneys; (10) the
"undesirability" of the case; (11) the nature and length of the
professional relationship with the client; and (12) awards in
similar cases. Id.

1 District.

2 Plaintiffs submit a declaration by Elizabeth
3 Rosenfeld that states that hourly rates for Plaintiffs'
4 counsel are \$250/hour and \$100/hour for legal
5 assistants. Decl. of Elizabeth Rosenfeld ("Rosenfeld
6 Decl.") ¶ 10, Ex. 9, ECF No. 30-11. Ms. Rosenfeld
7 shows that her skill, experience, reputation, and the
8 complexity of ERISA litigation justify the hourly rate.
9 She has been admitted to practice in California since
10 1982, nearly 35 years, and she has focused on ERISA
11 litigation for at least 21 of those years, at one point
12 handling over 50 ERISA litigation matters in any given
13 year. Id. at ¶¶ 8-9. "In the context of a default
14 judgment, the single declaration of plaintiffs'
15 attorney is sufficient to support an award of attorneys
16 fees." Electro Dynamic Services, 2008 WL 11338230, at
17 *5. Even so, the \$250 hourly rate is on par with
18 prevailing rates in the community and is thus
19 reasonable. Saks v. Int'l Longshore & Warehouse Union-
20 Pac. Maritime Ass'n Benefit Plans, LA CV09-02885 JAK
21 (Ex), 2013 WL 12170494, at *13 (C.D. Cal. Nov. 15,
22 2013)(reduced rates ranging from \$250 to \$535 per hour
23 for ERISA litigators with 30 years of experience were
24 reasonable); Tr. of the S. Cal. IBEW-NECA Pension Plan
25 et al. v. Niteowl Commc'ns., NO. CV 08-03621 SJO
26 (PJWx), 2008 WL 11338652, at *6 (C.D. Cal. Dec. 5,
27 2008)(concluding that hourly rates ranging from
28 \$160/hour to \$250/hour for attorneys and \$90/hour for

1 paralegals were reasonable particularly considering
2 declaration that \$200-\$350/hour is reasonable range for
3 multi-employer trust fund cases); Cf. Bd. of Tr. v. N.
4 Coast Contracting, Inc., No. 08-3577 SC, 2008 WL
5 5170714, at *3 (N.D. Cal. Dec. 9, 2008)(hourly rate of
6 \$250 was reasonable for attorney with 22 years
7 experience specializing in ERISA cases).

8 A district court has "wide latitude in determining
9 the number of hours that were reasonably expended by
10 the prevailing lawyers." Sorenson v. Mink, 239 F.3d
11 1140, 1147 (9th Cir. 2001). The fee applicant "bears
12 the burden of documenting the appropriate hours
13 expended in litigation and must submit evidence in
14 support of hours worked." Gates v. Deukmejian, 987
15 F.2d 1392, 1398 (9th Cir. 1992).

16 The number of hours performed is reasonable.
17 Plaintiffs seek 6.3 hours performed by legal
18 assistants, at the rate of \$100.00/hour, totaling \$630
19 and 29.51 hours performed by attorneys, at the rate of
20 \$250.00/hour, totaling \$7,377.50. Plaintiffs seek an
21 additional three hours of preparation for the hearing
22 on this Motion, totaling \$750.00, which brings the
23 total requested attorneys' fees to \$8,757.50.

24 Rosenfeld Decl. ¶ 11. Deducting the \$750.00,⁷ counsel
25 billed \$8,007.50. Between April 26, 2016 and June 8,

26
27 ⁷ Because this matter was taken under submission and no
28 hearing was held on this Motion, the Court deducts the additional
three hours and \$750.00 requested, bringing the total to 35.81
hours spent on the matter for a total of \$7,377.50.

1 2017, counsel spent 35.81 hours on the litigation,
2 including filing the Complaint, serving the summons and
3 Complaint, responding to the Motion to Set Aside
4 Default, and filing the instant Motion for Default
5 Judgment. Id. at Ex. 9. The attached record details
6 the specific tasks and work completed by the attorneys
7 and the legal assistants and does not suggest duplicate
8 hours or hours that are otherwise excessive or
9 unnecessary. Chalmers v. City of Los Angeles, 796 F.2d
10 1205, 1210 (9th Cir. 1986); NiteOwl Communications,
11 2008 WL 11338652, at *6 ("drafting complaint, obtaining
12 entry of default, and drafting the Motion for Default
13 Judgment were reasonable and appropriately divided
14 between paralegals and attorneys of differing
15 experience levels"). Thus, the Court finds that
16 \$8,007.50 is a reasonable attorneys' fees award.

17 Finally, the Court must look to the Kerr factors in
18 determining whether the lodestar figure is reasonable
19 and if it should be adjusted. 526 F.2d at 70. When
20 looking at the totality of the circumstances, none of
21 the Kerr factors necessitate that the Court adjust the
22 lodestar figure. ERISA litigation is a particularized
23 field that requires specialized skills to perform the
24 legal services, Ms. Rosenfeld has significant
25 experience in a specialized area, and Plaintiffs'
26 counsel repeatedly represent these specific Plaintiffs
27 in this type of litigation.

28 Plaintiffs lastly seek \$825.50 in litigation costs,

1 including: (1) 400.00 in District Court filing fees;
2 \$133.50 for service of process; and (3) \$292.00
3 expended in attempting to serve Defendant at its
4 previous business locations and on its previously
5 registered agent for service of process. ECF Nos. 1,
6 18; Rosenfeld Decl. ¶ 12, Ex. 10. Per ERISA §
7 502(g)(2)(D)(28 U.S.C. § 1132(g)(2)(D), the Court may
8 award reasonable litigation costs, and Local Rule 54-3
9 includes filing fees and fees for service of process in
10 costs awarded. L.R. 54-3. Thus, the Court awards
11 \$825.50 in costs to Plaintiffs.

12 **III. CONCLUSION**

13 For the foregoing reasons, the Court **GRANTS**
14 Plaintiffs' Motion for Default Judgment as to all
15 claims and enters judgment in favor of Plaintiffs [30].
16 The Court awards the following damages: \$12,066.19 in
17 delinquent contributions; \$14,459.91 in liquidated
18 damages; \$6,255.00 in audit fees; \$8,007.50 in
19 attorneys' fees; and \$825.50 in litigation costs; plus
20 interest, at the rate of one percent (1%) per month,
21 commencing when payment was due beginning on April 5,
22 2008, and continuing until payment is made.

23

24 **IT IS SO ORDERED.**

25 DATED: August 11, 2017

s/ RONALD S.W. LEW

26

HONORABLE RONALD S.W. LEW
Senior U.S. District Judge

27

28