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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BOARD OF DIRECTORS OF THE)
MOTION PICTURE INDUSTRY)
PENSION PLAN et al.)

Plaintiffs,)

v.)

S&L TRAMONDO, INC.;)
ALTERNATIVE METAL SUPPLY -)
STUDIO DIVISION, INC.,)

Defendants.)

CV 16-5771-RSWL-KSx

**ORDER re PLAINTIFFS'
MOTION FOR ENTRY OF
DEFAULT JUDGMENT AGAINST
DEFENDANTS S&L TRAMONDO,
INC. & ALTERNATIVE METAL
SUPPLY - STUDIO
DIVISION, INC. [21-1]**

Currently before the Court is Plaintiffs' Motion for Entry of Default Judgment [21-1] ("Motion" or "Motion for Default Judgment") against Defendants S&L Tramondo, Inc. ("S&L Tramondo") and Alternative Metal Supply - Studio Division ("Alternative Metal Supply") (collectively, "Defendants") as to all claims. The Court **NOW FINDS AND RULES AS FOLLOWS:** the Court **GRANTS** Plaintiffs' Motion and awards \$18,149.41 in damages to

1 Plaintiffs, plus interest, at the rate of one percent
2 (1%) per month, commencing when payment was due
3 beginning October 25, 2006 and continuing until payment
4 is made. The Court also **ORDERS** Defendants submit to an
5 audit of its financial records by Plaintiffs for the
6 period July 15, 2012 to May 21, 2016.

7 I. BACKGROUND

8 A. Factual Background

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

16 The Plans are employee welfare benefit and pension
17 plans within the meaning of the Employee Retirement
18 Income Security Act of 1974 ("ERISA") § 3(1)(29 U.S.C.
19 § 1002(1)) and § (3)(2)(29 U.S.C. § 1002(2)), and are
20 multiemployer plans within the meaning of ERISA §
21 3(37)(A)(29 U.S.C. § 1002(37)(A)) and § 515 (29 U.S.C.
22 § 1145). Id. at ¶ 4. The Plans are subject to the
23 provisions of section 302(c)(5) of the Labor-Management
24 Relations Act of 1947 ("LMRA"). Id. at ¶ 3.

25 Defendant S&L Tramondo is a business entity, form
26

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.

1 unknown, doing business in Los Angeles County under the
2 name "Alternative Metal Supply, Studio Division." Id.
3 at ¶ 5. S&L Tramondo has falsely held itself out as a
4 California corporation, entity number C2868919. Id.
5 State of California Entity Number C2868919 belongs to
6 Alternative Metal Supply. Id.

7 In March 2006, S&L Tramondo entered into a
8 Memorandum of Agreement with IATSE, agreeing to pay
9 contributions to the Plans for all employees from the
10 date of hire. Id. at ¶ 10; Compl. Ex. 1. Between
11 March 2006 and February 2007, S&L Tramondo and
12 Alternative Metal Supply executed various agreements to
13 pay contributions to the Plans for all employees from
14 the date of hire. Id. at ¶¶ 11-14; Exs. 2-5.

15 Alternative Metal Supply executed Consent Agreements
16 with IATSE agreeing to be bound by the 2003 Music Video
17 Production Agreement ("MVPA"), the 2004 Television
18 Commercial Agreement ("Commercial Agreement"), and the
19 2004-2007 Low Budget Theatrical Agreement. Id. at ¶¶
20 11-13. S&L Tramondo executed the 2007-2009 Low Budget
21 Theatrical Agreement. Id. at ¶ 14.

22 Defendants also executed Trust Acceptances,
23 agreeing to be bound by all terms and conditions of the
24 Trust Agreements establishing the Plans ("Trust
25 Agreements"). Id. at ¶ 15; Compl. Ex. 6. The Trust
26 Agreements obligated Defendants to submit a report and
27 pay contributions on a weekly basis to the Plans for
28 each hour worked by or guaranteed to employees. Id. at

1 ¶ 17; Decl. of Chris Tashchyan ("Tashchyan Decl.") Ex.
2 1, p. 11; Ex. 2, p. 18; Ex. 3, p. 24, ECF No. 21-2. 21-
3 3.

4 The Trust Agreements set forth payment procedures
5 for delinquent contributions to the Plans.
6 Contributions are delinquent if they are not received
7 within ten days from the date such contributions become
8 due. Tashchyan Decl. Ex. 1, p. 11; Ex. 2, p. 18; Ex.
9 3, p. 24. The Trust Agreements provide for the
10 assessment at an interest rate of one percent (1%) per
11 month on delinquent contributions, commencing when
12 payment was due and continuing to the date when payment
13 is made. Compl. ¶ 18; Tashchyan Decl. Ex. 1, p. 11;
14 Ex. 2, p. 18; Ex. 3, p. 24. In addition, the Trust
15 Agreements require payment of liquidated damages² for
16 delinquent contributions. Compl. ¶ 18; Tashchyan Decl.
17 Ex. 1, p. 12; Ex. 2, p. 19; Ex. 3, p. 26. Finally, in
18 the event of a delinquency, employers are liable for
19 all expenses of collection/enforcement, including all
20 costs, reasonable accountant's fees, auditor's fees,
21 and attorney's fees. Compl. ¶ 18; Tashchyan Decl. Ex.
22 1, p. 11; Ex. 2, p. 19; Ex. 3, p. 26.

23 Moreover, the Trust Agreements provide that the
24 Board of Directors may, "at reasonable times and during
25 normal business hours of any Employer," audit any

26
27 ² The amount of liquidated damages is the greater of either:
28 (1) twenty percent (20%) of all unpaid contributions; or (2)
interest calculated at a rate of one percent (1%) per month from
the due dates until the date when payment is made. Id.

1 employer's records that may be pertinent to the status
2 of plan contributions or reports. Compl. ¶ 19;
3 Tashchyan Decl. Ex. 1, pp. 14-15; Ex. 2, p. 21; Ex. 3,
4 p. 28. If the audit reveals a delinquency,
5 underpayment, or erroneous reporting, the Employer
6 bears costs of the audit or inspection. Id. And if
7 Defendants fail to make records available for audit and
8 the Plans file a lawsuit to compel document production,
9 Defendants are liable for enforcement expenses,
10 reasonable accountants' fees, auditors' fees,
11 attorneys' fees and costs, delinquent contributions,
12 liquidated damages, interest, attorneys' fees and costs
13 (regardless of whether the audit identifies delinquent
14 contributions). Compl. ¶ 20.

15 In 2014, Plaintiffs completed an audit of
16 Defendants' records for the period of October 25, 2006
17 to May 4, 2010 (the "Audit"). Compl. ¶ 24; Tashchyan
18 Decl. ¶ 11, Ex. 10, ECF No. 21-5. The Audit revealed
19 for the first time that Defendants failed to properly
20 report and pay contributions due to the Plans in the
21 amount of \$9,523.58. Compl. ¶ 24; Tashchyan Decl. ¶
22 11. In March 2016, Defendants agreed to pay the audit
23 delinquency in monthly installments, but only made
24 partial payment of \$1,584.80. Id. at ¶ 25. A total of
25 \$7,938.78 is still owed in contributions. Id.

26 Defendants also currently have failed to make
27 available for inspection records from July 15, 2012 to
28 May 21, 2016. Compl. ¶ 27. Plaintiffs ask the Court

1 to order Defendants to make said records available for
2 an audit so that they can ascertain whether
3 contributions were properly reported and paid to the
4 Plans from July 15, 2012 to May 21, 2016. Id. at ¶ 29.

5 **B. Procedural Background**

6 Plaintiffs filed a Complaint against all Defendants
7 on August 3, 2016, alleging three claims: (1) breach of
8 contract for failure to pay the audit delinquency
9 pursuant to the Trust Agreements; (2) failure under
10 ERISA § 502(a)(3)(29 U.S.C. § 1132(a)(3)), ERISA §
11 502(g)(2)(E)(29 U.S.C. § 1132(g)(2)(E)) to make records
12 available for audit as set forth in the Plans; and (3)
13 violation of ERISA § 515 (29 U.S.C. § 1145) for failure
14 to accurately report and pay contributions to the
15 Plans; Compl. ¶¶ 24-25, 30, 31.

16 Plaintiffs seek the following damages from
17 Defendants: (1) \$7,938.78 for unpaid contributions from
18 10/25/06-05/04/10; (2) \$7,704.08 interest (through
19 October 31, 2016); (3) \$7,704.08 liquidated damages
20 (through October 31, 2016); (4) attorneys' fees of
21 \$2,000.81; and (5) litigation costs of \$505.74.
22 Tashchyan Decl. ¶ 15; Notice of Mot. for Default Judgm.
23 3:4-9, ECF No. 21. Plaintiffs also seek an order from
24 this Court compelling Defendants to make available all
25 books and records for the period of July 15, 2012
26 through May 21, 2016. Compl. ¶ 4A. If Defendants
27 cannot produce all records, Plaintiffs ask the Court to
28 Order Record Reconstruction directing Defendants to

1 make available all copies of its periodic reports to
2 the Federal and State agencies and to provide auditors'
3 fees, reasonable attorneys' fees, and costs of suit.
4 Id. at ¶¶ 5B, 6-8.

5 Defendants were served with the summons and
6 complaint on August 16, 2016. Proof of Service, ECF
7 Nos. 12, 13. Neither appeared or otherwise responded
8 to the Complaint. On September 14, 2016, Plaintiffs
9 requested the Clerk to enter default against
10 Defendants. ECF Nos. 16, 17. The Clerk entered
11 default against Defendants on September 15, 2016, ECF
12 Nos. 18, 19. On October 26, 2016, Plaintiffs filed
13 this Motion. ECF No. 21-1. The Opposition was due on
14 November 8, 2016 but none was filed.

15 II. DISCUSSION

16 A. Legal Standard

17 The granting of Default Judgment is within the
18 discretion of the district court. Aldabe v. Aldabe,
19 616 F.2d 1089, 1092 (9th Cir. 1980); see Fed. R. Civ.
20 P. 55. Procedural and substantive requirements must be
21 met.

22 Procedurally, the requirements set forth in Federal
23 Rules of Civil Procedure 54(c) and 55(b), and Local
24 Rule 55-1 must be met. See Vogel v. Rite Aid Corp.,
25 992 F. Supp. 2d 998, 1006 (C.D. Cal 2014). Local Rule
26 55-1 provides: "When an application is made to the
27 Court for a default judgment, the application shall be
28 accompanied by a declaration in compliance with

1 F.R.Civ.P. 55(b)(1) and/or (2) and include the
2 following: (a) When and against what party the default
3 was entered; (b) The identification of the pleading to
4 which default was entered; (c) Whether the defaulting
5 party is an infant or incompetent person, and if so,
6 whether that person is represented by a general
7 guardian, committee, conservator or other
8 representative; (d) That the Service Members Civil
9 Relief Act, 50 U.S.C. App. § 521, does not apply; and
10 (e) That notice has been served on the defaulting
11 party, if required by F.R.Civ.P. 55(b)(2)." L.R. 55-1.

12 Courts should also consider the following factors
13 in determining whether to grant a motion for default
14 judgment: "(1) the possibility of prejudice to
15 plaintiff, (2) the merits of plaintiff's substantive
16 claims, (3) the sufficiency of the complaint, (4) the
17 sum of money at stake in the action, (5) the
18 possibility of a dispute concerning the material facts,
19 (6) whether defendant's default was the product of
20 excusable neglect, and (7) the strong public policy
21 favoring decisions on the merits." Eitel v. McCool,
22 782 F.2d 1470, 1471-72 (9th Cir. 1986).

23 If the court determines that the defendant is in
24 default, "'the factual allegations of the complaint,
25 other than those relating to damages, are taken as
26 true.'" Televideo Sys., Inc. v. Heidenthal, 826 F.2d
27 915, 917-18 (9th Cir. 1987) (quoting Geddes v. United
28 Fin. Group, 559 F.2d 557, 560 (9th Cir. 1977)).

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

7 If the Court determines that the allegations in the
8 complaint are sufficient to establish liability, the
9 plaintiff must provide proof of all damages sought in
10 the complaint, and the Court must determine the "amount
11 and character" of the relief that should be awarded.
12 Id. at 1005-06 (citations omitted); PepsiCo, 238 F.
13 Supp. 2d 1172, 1175 (C.D. Cal. 2002). "A default
14 judgment must not differ in kind from, or exceed in
15 amount, what is demanded in the pleadings." Fed. R.
16 Civ. P. 54(c).

17 **B. Discussion**

18 1. Jurisdiction and Service of Process

19 In considering whether to enter default judgment
20 against Defendants, the Court must first determine
21 whether it has jurisdiction over the subject matter and
22 the parties to the case. In re Tuli, 172 F.3d at 712.

23 a. *Subject Matter Jurisdiction, Personal* 24 *Jurisdiction, and Service of Process are* 25 *Proper*

26 The Court has subject matter jurisdiction over the
27 case, as Plaintiffs' claims allege violations of
28 federal claims for unpaid contributions under ERISA,

1 failure to comply with audits under the Plan terms and
2 ERISA, and breach of the Trust Agreements under LMRA §
3 301(a) (29 U.S.C. § 185(a)).³ Bd. of Trustees of Cement
4 Masons Health & Welfare Trust Fund for N. Cal. v. C&C
5 Concrete, Inc., No. C 10-03343 LB, 2013 WL 2456560, at
6 *3 (N.D. Cal. June 6, 2013) (subject matter
7 jurisdiction satisfied in motion for default judgment
8 for nearly-identical ERISA and LMRA type claims).

9 Here, the Court has personal jurisdiction over
10 Defendants. S&L Tramondo has been doing business in
11 Los Angeles County as a California Corporation using a
12 falsely represented Entity Number C2868919. Compl. ¶
13 5. The State of California Entity Number C2868919
14 actually belongs to Alternative Metal Supply - Studio
15 Division, which is a suspended California corporation.
16 Id. Both entities have minimum contacts with
17 California, as they conducted business here, held
18 themselves out as California corporations, and entered
19 into the Trust Agreements giving rise to the present
20 claims in California. Tashchyan Decl. Exs. 1-3.

21 Lastly, service of process is met because
22 Plaintiffs properly served the summons and the
23 Complaint on Defendants on August 16, 2016 [12] [13] in
24

25 ³ 29 U.S.C. § 185(a) allows any district court of the United
26 States jurisdiction over "suits for violation of contracts
27 between an employer and a labor organization representing
28 employees in an industry affecting commerce" The Plans
are subject to the provisions of section 302(c)(5) of the Labor-
Management Relations Act of 1947 ("LMRA"). Compl. ¶ 4.

1 conformance with Federal Rules of Civil Procedure
2 4(e)(2) and 4(h)(1)(A),(B).

3 2. Procedural Requirements

4 Plaintiffs have satisfied the procedural
5 requirements for default judgment pursuant to Federal
6 Rules of Civil Procedure 55 and Local Rule 55-1. Under
7 Federal Rule of Civil Procedure 55(a), the Court Clerk
8 properly entered default against Defendants. ECF Nos.
9 18, 19. Plaintiffs properly moved pursuant to Rule
10 55(b) for entry of default judgment. ECF No. 21.

11 Local Rule 55-1 asks Plaintiff to provide the
12 following in an application for default judgment: (1)
13 when and against what party the default was entered;
14 (2) the identification of the pleading to which default
15 was entered; (3) whether the defaulting party is an
16 infant or incompetent person; (4) that the
17 Servicemembers Civil Relief Act does not apply; and (5)
18 notice has been served on the defaulting party.

19 Plaintiffs have satisfied these requirements. The
20 Clerk of Court entered default judgment against
21 Defendants as to the Complaint on September 15, 2016
22 [18, 19]. Decl. of Elizabeth Rosenfeld ("Rosenfeld
23 Decl.") ¶ 6. Neither Defendants are an infant,
24 incompetent person, or exempted under the Soldiers' and
25 Sailors' Civil Relief Act of 1940, the predecessor to
26 the Servicemembers Civil Relief Act. Id. at ¶¶ 2, 3.
27 Lastly, Defendants were served with notice of this
28 Motion on October 26, 2016. ECF No. 22.

1 3. Eitel Factors

2 The Court must also determine whether granting
3 Plaintiffs' Motion is appropriate under the Eitel
4 factors.

5 a. *Risk of Prejudice to Plaintiff*

6 The first Eitel factor considers whether a
7 plaintiff will suffer prejudice if a default judgment
8 is not entered. Vogel, 992 F. Supp. 2d at 1007.
9 Plaintiffs contend that they have been damaged to the
10 tune of the delinquent contributions, associated
11 interest, liquidated damages, attorneys' fees, costs,
12 and separate attorneys' fees and costs incurred in
13 compelling the audit. Mot. 6:24-26. Given Defendants'
14 refusal to pay the sums due or provide records,
15 Plaintiffs will suffer prejudice because they "will
16 likely be without other recourse for recovery" if
17 default judgment is not entered. Id. at 6:26-28.
18 Moreover, if the Court does not hold Defendants
19 accountable for unpaid contributions, future
20 beneficiaries may face risk if the Plan is underfunded.
21 Bd. Of Trustees of the Clerks & Lumber Handlers Pension
22 Fund v. Piedmont Lumber & Mill Co., No. C 10-1757 MEJ,
23 2010 WL 4922677, at *4 (N.D. Cal. Nov. 29, 2010). And
24 allowing Defendants to avoid submitting to an audit
25 would prevent Plaintiffs from ascertaining even more
26 unpaid contributions. See Gen. Emps. Trust Fund v.
27 Victory Bldg. Maint., Inc., No. C 06-6654 CW (MEJ),
28 2007 WL 1288393, at *3 (N.D. Cal. Apr. 11, 2007). This

1 factor favors entry of default judgment.

2 b. *Sufficiency of the Complaint and*
3 *Likelihood of Success on the Merits*

4 The second and third Eitel factors consider the
5 merits of the plaintiff's substantive claims and the
6 sufficiency of the complaint. "Under an [Eitel]
7 analysis, [these factors] are often analyzed together."
8 Dr. JKL Ltd. v. HPC IT Educ. Ctr., 749 F. Supp.2d 1038,
9 1048 (N.D. Cal. 2010). Plaintiffs have pled
10 meritorious claims for violation of the Trust
11 Agreements, violation of ERISA § 515 (29 U.S.C. §
12 1145), and the ability to audit Defendants' records
13 under the Trust Agreements.

14 i. *Breach of Trust Agreements*

15 As a threshold matter, Plaintiffs have standing to
16 enforce Labor Management Relations Act section 301(a)
17 (29 U.S.C. § 185(a))⁴ and ERISA § 515 (29 U.S.C. §
18 1145). Section 301 of the Labor Management Relations
19 Act ("LMRA") allows for third party beneficiaries, like
20 the Board of Directors of the Plans, to enforce an
21 employer-labor organization agreement. See Audit
22 Servs., Inc. v. Rolfson, 641 F.2d 757, 760 (9th Cir.
23 1981). Additionally, Plaintiffs have standing to

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

8 Plaintiffs have also demonstrated that Defendants
9 breached the Trust Agreements through audit
10 delinquency. They were bound by the Memorandum of
11 Agreement to the terms and conditions of the Trust
12 Agreements, including the obligation to pay
13 contributions to the Plan for employees, Compl. ¶ 17,
14 the weekly remittance report and contributions, and the
15 associated fees for delinquent payments. Compl. ¶ 18;
16 Taschyan Decl. ¶ 8A. The Trust Agreements also allow
17 for enforcement expenses, should a permissible audit
18 inspection of the employer's records reveal unpaid
19 contributions. Compl. ¶ 19. Defendants breached these
20 terms when the audit revealed \$9,523.58 unpaid
21 contributions to the Plans, and Defendants failed to
22 pay the audit delinquency in its entirety. Compl. ¶¶
23 24-25; Tashchyan Decl. ¶¶ 11-12, 14. Plaintiffs have
24 sufficiently alleged a contractual obligation to make
25 contributions and a subsequent breach.

26 ii. *Violation of ERISA § 515*

27 From the evidence and four corners of the
28 Complaint, Plaintiffs have demonstrated meritorious

1 claims for violation of ERISA § 515 (29 U.S.C. § 1145).⁵

2 Section 515 allows plan fiduciaries to enforce
3 obligations created under the collective bargaining
4 agreement against employers who fail to make
5 contributions to employee benefit plans. Bd. Of
6 Trustees of U.A. v. RT/DT, Inc., No. C 12-05111 JSW,
7 2013 WL 2237871, at *4 (N.D. Cal. May 21, 2013). To
8 successfully assert this claim, Plaintiffs must prove:
9 (1) the Trust Agreements are multi-employer plans; (2)
10 the collective bargaining agreement obligated
11 Defendants to make employee benefit contributions; and
12 (3) Defendants failed to make the contribution
13 payments. Id. at *4.

14 Plaintiffs have made a threshold demonstration that
15 Defendants violated section 515 because the Plans are
16 multiemployer plans, Compl. ¶ 4, and the Trust
17 Agreement establishing the Plans obligated Defendants
18 to make contributions for total hours worked by or
19 guaranteed to all employees covered by the agreements
20 by the last day of the week following the week in which
21 work was performed. Compl. ¶ 17; Tashchyan Decl. ¶ 7A.
22 Lastly, Defendants failed to make the contribution
23 payments between October 25, 2006 and May 4, 2010,
24

25 ⁵ Section 1145 provides: "Every employer who is obligated to
26 make contributions to a multiemployer plan under the terms of the
27 plan or under the terms of a collectively bargained agreement
28 shall, to the extent not inconsistent with law, make such
contributions in accordance with the terms and conditions of such
plan or such agreement."

1 which was discovered through a 2014 audit. Compl. ¶
2 24; Tashchyan Decl. ¶¶ 11-12. They also failed to pay
3 the total balance of the unpaid contributions, and have
4 remaining unpaid contributions, liquidated damages,
5 interest, and audit fees due and owing. Compl. ¶ 24;
6 Tashchyan Decl. ¶¶ 11-12, 14.

7 Plaintiffs also demonstrate that they are entitled
8 to remedies associated with a violation of ERISA § 515.
9 When judgment is entered in favor of a plan under ERISA
10 § 515, ERISA § 502(g)(2) (29 U.S.C. § 1132(g)(2))
11 requires the Court to award unpaid contributions,
12 interest on unpaid contributions, an amount equal to
13 the greater of interest on unpaid contributions or
14 liquidated damages provided under the plan, reasonable
15 attorney's fees and costs, and other such legal or
16 equitable relief as the Court deems appropriate. The
17 Trust Agreements mirror ERISA § 502(g)(2)'s language
18 and obligate a delinquent employer to pay for
19 delinquent contributions, liquidated damages, interest
20 accruing at the rate of 1% per month on all unpaid
21 contributions, and all expenses of collection,
22 including costs, reasonable accountants' fees,
23 auditors' fees and attorneys' fees. Compl. ¶ 18;
24 Tashchyan Decl. ¶ 7B-7E, Exs. 1-3. As such, the Court
25 can conclude that Plaintiffs have properly stated a
26 claim for and are entitled to remedies under ERISA §
27 502(g)(2).

28 ///

1 iii. *Injunctive Relief: Audit*

2 Plaintiffs also seek injunctive relief compelling
3 specific performance of Defendants' obligation to allow
4 Plaintiffs to audit the period of July 15, 2012 to May
5 21, 2016. Compl. ¶ 27. Because Defendants have thus
6 far refused, Plaintiffs request the Court grant an
7 audit so it can ascertain whether contributions have
8 been paid for this time period. *Id.* at ¶ 29.

9 "Where a collective bargaining agreement gives the
10 Trustees of an employee benefit plan the right to audit
11 an employer's books and records, it will be enforced."
12 Bd. of Trustees v. LML Enters., Inc., No. C 13-3117 RS,
13 2014 WL 2880023, at *7 (N.D. Cal. June 24, 2014)
14 (citing Cent. States, Se. & Sw. Areas Pension Fund v.
15 Cent. Transp., Inc., 472 U.S. 559, 569 (1985)).

16 Pursuant to ERISA § 502(a)(3) (29 U.S.C. § 1132(a)(3)),⁶
17 Plaintiffs may seek an injunction enforcing the Plan's
18 audit provisions. Here, the Trust Agreement allows the
19 Directors to "audit . . . the records of any Employer
20 which may be pertinent in connection with the said
21 contributions" Because the Trust Agreement
22 expressly provides for audits like this one, and "[t]he
23 right of employee benefit plans to enforce such power

24
25 ⁶ Section 1132(a)(3) provides: "A civil action may be
26 brought [] by a participant, beneficiary, or fiduciary (A) to
27 enjoin any act or practice which violates any provision of this
28 title or the terms of the plan, or (B) to obtain other
appropriate equitable relief (i) to redress such violations or
(ii) to enforce any provisions of this title or the terms of the
plan."

1 to audit is well-established," the court finds the
2 "specific performance" claim—effectively, one for
3 injunctive relief—has merit. Bd. of Trustees v.
4 Protech Servs., Inc., No: C 12-01047 MEJ, 2014 WL
5 122702, at *6 (N.D. Cal. Jan. 14, 2014)(merits and
6 sufficiency of complaint factors weighed towards
7 allowing audit to proceed, in order to allow plaintiffs
8 to discover additional amounts due and owing.)

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

10 "Under the [fourth] Eitel factor, the court must
11 consider the amount of money at stake in relation to
12 the seriousness of Defendant's conduct." PepsiCo, 238
13 F. Supp. 2d at 1176. "While the allegations in a
14 complaint are taken to be true for the purposes of
15 default judgment, courts must make specific findings of
16 fact in assessing damages." Moroccanoil, Inc. V.
17 Allstate Beauty Prod., Inc., 847 F. Supp. 2d 1197, 1202
18 (C.D. Cal. 2012).

19 For the breach of ERISA and Trust Agreement claims,
20 Plaintiffs request \$7,938.78 for payment of the owed
21 contributions, \$7,704.08 for liquidated damages,
22 \$7,704.08 for interest, \$2,000.81 for attorneys' fees,
23 and \$505.74 for litigation costs. These amounts are
24 all authorized under the Trust Agreements and
25 "appropriately tailored to [Defendants'] specific
26 misconduct in failing to make timely contribution
27 payments." RT/DT, Inc., 2013 WL 2237871, at *5. And
28 because costs associated with failure to comply with an

1 audit are clearly set forth in the Trust Agreements,
2 that amount can be better discerned at a later time, as
3 can the total amount of damages following the audit.
4 Bd. of Trustees v. RBS Washington Blvd, LLC, No. C
5 09-00660 WHA, 2010 WL 145097, at *3 (N.D. Cal. Jan. 8,
6 2010) ("The Court can evaluate the reasonableness of
7 the total amount requested once the audit has been
8 completed . . . [t]he undetermined amount of total
9 damages does not disfavor granting default judgment.")

10 d. *Possibility of a Dispute Concerning a*
11 *Material Fact*

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

18 Defendants have had sufficient time since the Complaint
19 was served in August 2016 to answer or at least oppose
20 this Motion. Considering this with the fact that ERISA
21 § 502(g)(2) (29 U.S.C. § 1132(g)(2)) and the Trust
22 Agreements are clear as to both parties' obligations in
23 the event of a breach of the collective bargaining
24 agreements, the Court finds that any material factual
25 disputes are unlikely and this factor weighs towards
26 granting default judgment.

27 ///

28 ///

1 e. *The Possibility of Excusable Neglect*

2 This factor examines whether Defendants' failure to
3 respond to Plaintiffs' Complaint was the result of
4 excusable neglect. Eitel, 782 F.2d at 1472.

5 Defendants were properly served with the summons,
6 Complaint, and instant Motion, which indicates that
7 they had adequate notice of the action. See Shanghai
8 Auto. Instrument Co. v. Kuei, 194 F. Supp. 2d 995, 1005
9 (N.D. Cal. 2001) (finding no excusable neglect because
10 defendants were properly served with the complaint,
11 notice of entry of default, and papers in support of
12 motion for default judgment).

13 f. *Policy Favoring Deciding a Case on its*
14 *Merits*

15 The Ninth Circuit stated that "[c]ases should be
16 decided upon their merits whenever reasonably
17 possible." Eitel, 782 F.2d at 1472. However, "this
18 preference, standing alone, is not dispositive."
19 PepsiCo, 238 F. Supp. 2d at 1177. Because Defendants
20 have failed to participate meaningfully in this
21 litigation, a decision on the merits is not "reasonably
22 possible" at this juncture. Nevertheless, this factor
23 weighs against granting default judgment.

24 3. Character and Amount of Plaintiffs' Recovery

25 The Court now turns to the damages Plaintiffs
26 request.

27 a. *Unpaid Contributions*

28 Plaintiffs seek unpaid contributions of \$7,938.78

1 from October 25, 2006 to May 4, 2010, after an audit
2 revealed \$9,523.58 in unpaid contributions and
3 Defendants only paid \$1,584.80 of the outstanding
4 balance. Compl. ¶¶ 24-25. To substantiate this
5 amount, Plaintiffs submit the Declaration of Chris
6 Tashchyan, the Manager of Audit and Collections.
7 Tashchyan Decl. ¶ 2. Mr. Tashchyan is tasked with
8 auditing and collecting employer contributions to the
9 Plans. Id. The declaration and attached exhibits
10 establish that Defendants allowed an audit in 2014
11 pursuant to the Trust Agreements, which revealed the
12 relevant employees and time periods for which they were
13 unpaid. Tashchyan Decl. ¶ 12; Ex. 10. Mr. Tashchyan
14 also furnishes a schedule of over reported and
15 underreported contributions to the Plans indicating how
16 Plaintiffs calculated the \$9,523.58 total and the
17 remaining \$7,938.78 owed. Tashchyan Decl. Ex. 10, ECF
18 No. 21-5. Plaintiffs have demonstrated they are
19 entitled to this amount in unpaid contributions.

20 b. *Interest and Liquidated Damages*

21 Plaintiffs also seek interest and liquidated
22 damages on unpaid contributions of \$7,704.08 each.
23 ERISA § 502(g)(2) (29 U.S.C. § 1132(g)(2)) permits a
24 plan fiduciary to collect interest on all delinquent
25 contributions once they have prevailed on an ERISA §
26 515 (29 U.S.C. § 1145) claim, allowing for an interest
27 rate provided under the Plans.

28 The Ninth Circuit has clearly stated that an award

1 of liquidated damages under ERISA § 502(g)(2) (29
2 U.S.C. § 1132(g)(2)) is "mandatory and not
3 discretionary." Operating Eng'rs Pension Trust v. Beck
4 Engineering & Surveying Co., 746 F.2d 557, 569 (9th
5 Cir. 1984). A plaintiff is entitled to a mandatory
6 award under § 1132(g)(2) if the following requirements
7 are met: (1) the fiduciary obtains a judgment in favor
8 of the plan; (2) unpaid contributions exist at the time
9 of the suit; and (3) the plan provides for liquidated
10 damages. Idaho Plumbers & Pipefitters Health & Welfare
11 Fund v. United Mech. Contractors, Inc., 875 F.2d 212,
12 215 (9th Cir. 1989). Plaintiffs satisfy these
13 requirements, as the Court has found that the Plan was
14 violated, Defendants had unpaid contributions of
15 \$7,938.78 as of the time this suit was filed, and the
16 Trust Agreements allow for liquidated damages.
17 Tashchyan Decl. ¶ E; Ex. 1, at 12; Ex. 2, at 19; Ex. 3,
18 at 26. Plaintiffs are therefore entitled to interest
19 and liquidated damages.

20 c. *Attorneys' Fees and Litigation Costs*

21 Plaintiffs lastly seek attorneys' fees of \$2,000.81
22 and costs of suit, of \$505.74. Central District Local
23 Rule 55-3 delineates a schedule of attorneys' fees in
24 the event of default judgment, if the applicable
25 statute provides for recovery of reasonable attorneys'

26 ///

27 ///

28 ///

1 fees.⁷ Vogel, 992 F. Supp. 2d at 1016. If the
2 judgment, exclusive of costs, falls between \$10,000 to
3 \$50,000, the court is to award attorneys' fees of
4 \$1,200 plus 6% of the amount over \$10,000. Rosenfeld
5 Decl. ¶ 8. Here, the judgment exclusive of costs is
6 \$23,346.93. Id. at ¶ 8. Applying the attorneys' fees
7 schedule, Plaintiffs are entitled to \$2,000.81. Id.
8 The Court likewise finds the litigation costs for
9 service of process, \$105.74, and filing fees of \$400.00
10 accurately reflect the \$505.74 total in costs. Id. at
11 ¶ 9; ECF Nos. 12-13.

12 d. *Injunctive Relief: Audit*

13 Plaintiffs request that the Court issue an Order
14 requiring Defendants to submit to an audit of their
15 records from July 15, 2012 through May 21, 2016 so that
16 Plaintiffs may discern additional unpaid contributions.
17 Plaintiffs also ask the Court to amend the damages
18 amount once further unpaid contributions are determined
19 through the audit. Compl. ¶ 29.

20 "In ERISA cases, courts may retain jurisdiction to
21 adjust the damages award following an audit." Protech
22 Services, 2014 WL 122702, at *13. Under the Trust
23 Agreements, the Board of Directors may "audit or cause
24 the audit or an inspection of the records of any
25 Employer which may be pertinent in connection with the

26

27 ⁷ 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 said Contributions and/or reports and insofar as same
2 may be necessary to accomplish the purposes of this
3 plan." Compl. ¶ 20; Tashchyan Decl. ¶ 7B, Ex. 1, pp.
4 14-15; Ex. 2, p. 21; Ex. 3, p. 28. On June 23, 2016,
5 Mr. Tashchyan sent a letter to Defendants attaching the
6 relevant Trust Agreement language and requesting that
7 Defendants submit to an audit. Tashchyan Decl. Ex. 11.
8 Moreover, the attached Trust Agreements put Defendants
9 on notice that they would bear the expenses of
10 enforcement related to the audit. Id. Based on the
11 submitted exhibit and the plain terms of the Trust
12 Agreements, Plaintiffs have the right to audit "and
13 demand payment of properly substantiated additional
14 delinquencies." Protech Services, 2014 WL 122702, at
15 *13. Once Plaintiffs make a proper showing as to
16 delinquencies, the Court may proceed to amend the
17 Judgment.

18 The Court awards Plaintiffs' requested damages, and
19 permits Plaintiffs to conduct an audit for the Plans
20 for the period of July 15, 2012 to May 21, 2016.

21 III. CONCLUSION

22 The Court **GRANTS** Plaintiffs' Motion for Default
23 Judgment [21-1]. The Court enters default judgment as
24 to all Defendants, S&L Tramondo and Alternative Metal
25 Supply.

26 The Court awards \$18,149.41 in damages: \$7,938.78
27 for delinquent contributions; \$7,704.08 in liquidated
28 damages; \$2,000.81 in attorneys' fees; \$505.74 in

1 litigation costs; plus interest, at the rate of one
2 percent (1%) per month, commencing when payment was due
3 beginning on October 25, 2006, and continuing until
4 payment is made.

5 The Court also **HEREBY ORDERS** Defendants submit to
6 an audit of its financial records by Plaintiffs for the
7 period July 15, 2012 to May 21, 2016. In the event
8 Defendants cannot produce all of the records which the
9 Plans are required to examine, Defendants are ordered
10 to participate in record reconstruction, where
11 Defendants shall have 14 days to: (1) apply to the
12 Federal and State agencies with which Defendants
13 previously filed periodic reports pertaining to
14 employees for copies of the Defendants' reports to them
15 for all of the periods for which Defendant cannot
16 produce records; and (2) subsequently make available to
17 the Plans all such copies of Defendants' periodic
18 reports to the Federal and State agencies under the
19 conditions set forth above. The Court shall retain
20 jurisdiction over the parties and the subject matter to
21 enforce its mandatory injunction and to entertain a
22 motion for further money judgment, should the audit
23 disclose amounts that Defendants may owe.

24 **IT IS SO ORDERED.**

25
26 DATED: December 15, 2016

s/ RONALD S.W. LEW

27 **HONORABLE RONALD S.W. LEW**
28 Senior U.S. District Judge