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**United States District Court  
Central District of California**

CARPENTERS SOUTHWEST  
ADMINISTRATIVE CORPORATION,  
BOARD OF TRUSTEES FOR THE  
CARPENTERS SOUTHWEST TRUSTS,

Plaintiffs,

v.

TOWNE CONSTRUCTION INC.,  
THOMAS MICHAEL TOWNE, MARC  
THOMAS TOWNE, AMERICAN  
CONTRACTORS INDEMNITY  
COMPANY,

Defendants.

Case No. 2:17-cv-00232-ODW (Ex)

**ORDER GRANTING PLAINTIFFS’  
MOTION FOR DEFAULT  
JUDGMENT [26]**

**I. INTRODUCTION**

Plaintiffs Carpenters Southwest Administrative Corporation and Board of Trustees for the Carpenters Southwest Trusts (collectively, the “Trust Funds” or “Plaintiffs”), brought suit against Defendants Towne Construction Inc. (“Towne Inc.”), Thomas Michael Towne, Marc Thomas Towne, and American Contractors Indemnity Company (collectively, “Defendants”) for failure to pay fringe benefit contributions, for defalcation of a fiduciary and failure to pay contractor’s license bond. The Trust

1 Funds move for entry of default judgment against Towne Inc. For the reasons discussed  
2 below, the Court **GRANTS** the Motion. (Mot. for Default J. (“Mot.”), ECF No. 26.)<sup>1</sup>

## 3 **II. FACTUAL BACKGROUND**

4 On or about July 1, 2001, Towne Inc. entered into an agreement  
5 (“Memorandum”) with Southwest Regional Counsel of Carpenters and its affiliated  
6 unions. (Compl. ¶¶ 11, 12, 15.) The Memorandum binds Towne Inc. to the terms of  
7 several other agreements including the Southern California Drywall/Lathing Master  
8 Agreement, renewals or subsequent Master Labor Agreements, and other  
9 multiemployer benefit plan agreements (collectively, “Agreements”). (Compl.  
10 ¶¶ 9, 16.) Under the Agreements, Towne Inc. was obligated to pay fringe benefit  
11 contributions for every hour worked by employees performing services covered by the  
12 Agreements and provide monthly reports of the benefit due. (Compl. ¶¶ 17–18.)  
13 However, Towne Inc. failed to pay the fringe benefits for its employed workers covered  
14 by the Agreements. (Compl. ¶¶ 20–21.) Thus, per the terms of the Agreements, Towne  
15 Inc. is liable to pay liquidated damages, interest, contributions owed, and attorneys’  
16 fees. (Compl. ¶¶ 19–24.)

17 On January 11, 2017, the Trust Funds filed a complaint against Defendants for  
18 failure to pay fringe benefit contributions, for defalcation of a fiduciary and failure to  
19 pay contractor’s license bond. (*See* Compl.) The Trust Funds served the complaint on  
20 Defendants on January 12, 2017. (Proof of Service, ECF No. 7.) On March 31, 2017,  
21 the Court granted the stipulation to dismiss the case without prejudice subject to reopen  
22 if the settlement is not consummated. (Order, ECF No. 15.) On August 13, 2019,  
23 Plaintiffs filed an ex parte application to reopen the case which the Court granted. (Ex  
24 Parte Appl., ECF No. 16; Ex Parte Order, ECF No. 17.) The Court ordered Defendant  
25 Towne Inc. to respond within 21 days. (*See* Ex Parte Order.) On August 15, 2019,  
26 Plaintiffs served Towne Inc. the Ex Parte Order, but as Towne Inc. failed to appear,  
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28 <sup>1</sup> After considering the moving papers, the Court deemed the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78(b); C.D. Cal. L.R. 7-15.

1 they requested that the Clerk enter default against Towne Inc. on September 6, 2019.  
2 (Req., ECF No. 21.) The Clerk entered a default on September 10, 2019. (Default by  
3 Clerk, ECF No. 25.) On October 22, 2019, the Trust Funds filed the instant Motion for  
4 Default Judgment (“Motion”). (See Mot.)

### 5 III. LEGAL STANDARD

6 Federal Rule of Civil Procedure 55(b) authorizes a district court to grant a default  
7 judgment after the Clerk enters a default under Rule 55(a). Fed. R. Civ. P. 55(b). Before  
8 a court can enter a default judgment against a defendant, the plaintiff must satisfy the  
9 procedural requirements set forth in Federal Rules of Civil Procedure 54(c) and 55, as  
10 well as Local Rule 55-1 and 55-2. Fed. R. Civ. P. 54(c), 55; C.D. Cal. L.R. 55-1, 55-2.  
11 Local Rule 55-1 requires that the movant submit a declaration establishing (a) when and  
12 against which party default was entered; (b) identification of the pleading to which  
13 default was entered; (c) whether the defaulting party is a minor, incompetent person, or  
14 active service member; (d) that the Servicemembers Civil Relief Act, 50 U.S.C. § 3931,  
15 does not apply; and that (e) the defaulting party was properly served with notice, if  
16 required under Rule 55(b)(2). C.D. Cal. L.R. 55-1. Finally, if the plaintiff seeks  
17 unliquidated damages, Local Rule 55-2 requires the plaintiff to give notice to the  
18 defaulting party of the amount sought. C.D. Cal. L.R. 55-2.

19 If these procedural requirements are satisfied, a district court has discretion to  
20 enter default judgment. *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). In  
21 exercising its discretion, a court must consider several factors, including: (1) the  
22 possibility of prejudice to a plaintiff; (2) the merits of plaintiff’s substantive claims; (3)  
23 the sufficiency of the complaint; (4) the sum of money at stake; (5) the possibility of a  
24 dispute concerning material facts; (6) whether the defendant’s default was due to  
25 excusable neglect; and (7) the strong policy underlying the Federal Rules of Civil  
26 Procedure favoring decisions on the merits. *Eitel v. McCool*, 782 F.2d 1470, 1471–72  
27 (9th Cir. 1986). Upon entry of default, the defendant’s liability generally is  
28 conclusively established, and the well-pleaded factual allegations in the complaint are

1 accepted as true, except those pertaining to damages. *Televideo Sys., Inc. v. Heidenthal*,  
2 826 F.2d 915, 917–19 (9th Cir. 1987) (per curiam) (citing *Geddes v. United Fin. Grp.*,  
3 559 F.2d 557, 560 (9th Cir. 1977)).

#### 4 IV. DISCUSSION

##### 5 A. Procedural Requirements

6 The Court finds that the Trust Funds have complied with the relevant procedural  
7 requirements for entry of default judgment. Counsel submits a declaration attesting  
8 that: (a) the Clerk entered a default against Towne Inc. on September 10, 2019; (b) the  
9 default was entered on the original complaint filed by the Trust Funds on January 11,  
10 2017; (c) Towne Inc. is not an infant or incompetent person; (d) Towne Inc. is not  
11 covered under the Servicemembers Civil Relief Act; and (e) the Trust Funds served  
12 Towne Inc. with notice of the request for entry of default (additional notice was not  
13 required per Local Rule 55-2). (Decl. of Casey Jensen (“Jensen Decl.”) ¶¶ 3–6, ECF  
14 No. 26-9; Decl. of Casey Jensen at 3, ECF No. 24-1.) Accordingly, the procedural  
15 requirements are satisfied.

##### 16 B. *Eitel* Factors

17 The Court finds that the *Eitel* factors weigh in favor of entering a default  
18 judgment. The Court discusses each factor in turn.

###### 19 1. Plaintiffs Would Suffer Prejudice

20 The first *Eitel* factor asks whether the plaintiff will suffer prejudice if a default  
21 judgment is not entered. *Eitel*, 782 F.2d at 1471. Denial of default leads to prejudice  
22 when it leaves a plaintiff without a remedy or recourse to recover compensation.  
23 *Landstar Ranger, Inc. v. Parth Enter., Inc.*, 725 F. Supp. 2d 916, 920 (C.D. Cal. 2010).  
24 As Towne Inc. has failed to appear in the action, if default judgment were denied, the  
25 Trust Funds would be unable to recover the delinquent contributions owed by Towne  
26 Inc. Therefore, this factor favors entry of a default judgment.

###### 27 2. Plaintiffs Has Adequately Pleaded a Meritorious Claim

28 The second and third *Eitel* factors “require that a plaintiff ‘state a claim on which

1 [it] may recover.” *Philip Morris USA, Inc. v. Castworld Prods., Inc.*, 219 F.R.D. 494,  
2 499 (C.D. Cal. 2003). The Trust Funds assert a claim for delinquent contributions under  
3 the Employee Retirement Income Security Act (“ERISA”). (Compl. ¶¶ 12–30.) Under  
4 ERISA, “[e]very employer who is obligated to make contributions to a multiemployer  
5 plan . . . shall . . . make such contributions in accordance with the terms and conditions  
6 of such plan or such agreement.” 29 U.S.C. § 1145; *see also Winterrowd v. David*  
7 *Freedman & Co.*, 724 F.2d 823, 826 (9th Cir. 1984) (holding that employer’s failure to  
8 contribute agreed-upon amount to pension fund covering agricultural workers was an  
9 ERISA violation). If the employer fails to make contributions as required, the plan or  
10 a plan fiduciary may bring an action to recover the unpaid contributions. *See* 29 U.S.C.  
11 § 1132(d)(1); *see e.g., Bd. of Trs. of Bay Area Roofers Health & Welfare Tr. Fund v.*  
12 *Westech Roofing*, 42 F. Supp. 3d 1220 N.D. Cal. 2014).

13 Here, Towne Inc. must make contributions to a multiemployer plan, and submit  
14 true, complete, and accurate written monthly contribution reports. (*See* Decl. of Norma  
15 Guerrero (“Guerrero Decl.”) ¶¶ 10–11, 14, ECF No. 26-2.) However, Towne Inc.  
16 submitted its report late or failed to pay fringe benefit contributions from March 2013  
17 through August 2013, October 2013 through January 2017, April 2017, July 2017,  
18 September 2017, and November 2017 through July 2018. (*See* Decl. of Chris Hidalgo  
19 (“Hidalgo Decl.”) ¶ 11, ECF No. 27.) Clearly, Towne Inc. is obligated under the terms  
20 of the Memorandum to make contributions to the Trust Funds, a multiemployer plan,  
21 and its failure to make such contributions constitutes a violation of ERISA section 515.  
22 *See* 29 U.S.C. § 1145. Thus, this factor weighs in favor of default judgment.

### 23 3. The Amount at Stake Weighs in Favor of Default Judgment

24 To determine whether the damages sought are proper for the scope of default  
25 judgment, “the court must consider the amount of money at stake in relation to the  
26 seriousness of [d]efendant’s conduct.” *PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F. Supp.  
27 2d 1172, 1176 (C.D. Cal. 2002). The Trust Funds request fringe benefit contributions  
28 of \$503,885.97, liquidated damages of \$496,309.39, prejudgment interest of

1 \$182,222.47, attorneys' fees of \$23,603.91, and costs. (Mot. 10.) Because the evidence  
2 before the Court shows that Towne Inc. failed to make benefit contributions to the Trust  
3 Funds as required under the Memorandum, thereby violating section 1145, and as the  
4 requested damages are allowed under section 1132, this factor weighs in favor of default  
5 judgment. *See* 29 U.S.C § 1145; 29 U.S.C § 1132(g).

6 4. There is No Possibility of Dispute as to Material Facts

7 As illustrated in the discussion of the second *Eitel* factor, the Trust Funds  
8 sufficiently allege that Towne Inc. failed to make benefit contributions as required under  
9 the Memorandum. It is well established that “[u]pon entry of default, all well-pleaded  
10 facts in the complaint are taken as true, except those relating to damages.” *PepsiCo*, 238  
11 F. Supp. 2d at 1177. As Towne Inc. neither responded to the complaint nor introduced  
12 evidence to counter the Trust Funds’ claims, “no factual disputes exist that would  
13 preclude the entry of default judgment.” *Vogel v. Rite Aid Corp.*, 992 F. Supp. 2d 998,  
14 1013 (C.D. Cal. 2014).

15 5. There is Little Possibility Default was Due to Excusable Neglect

16 The Trust Funds effected proper service under Federal Rule of Civil Procedure  
17 4(e) by substituted service permitted by the California Code of Civil Procedure. (*See*  
18 *Proof of Service*.) As such, there is no evidence of excusable neglect because Towne  
19 Inc. was notified not only of the lawsuit, but also about a possible entry of a default.  
20 Therefore, this factor also weighs in favor of default judgment.

21 6. Policy for Deciding on the Merits Weighs in Favor of Granting Default  
22 Judgment

23 In *Eitel*, the court maintained that “[c]ases should be decided upon their merits  
24 whenever reasonably possible.” *Eitel*, 782 F.2d at 1472. While this factor will always  
25 disfavor the entry of judgment, it alone does not outweigh the other factors that clearly  
26 favor entry of judgment. The Court thus concludes that the *Eitel* factors favor the Court  
27 entering a default judgment against Towne Inc.

1 **C. Amount of Judgment**

2 **1. Damages**

3 In an action to recover delinquent contributions, the Court must award the  
4 following:

- 5 (A) the unpaid contributions,  
6 (B) interest on the unpaid contributions,  
7 (C) an amount equal to the greater of--  
8 (i) interest on the unpaid contributions, or  
9 (ii) liquidated damages provided for under the plan in an amount not  
10 in excess of 20 percent (or such higher percentage as may be  
11 permitted under Federal or State law) of the amount determined by  
12 the court under subparagraph (A),  
13 (D) reasonable attorney’s fees and costs of the action, to be paid by the  
14 defendant, and  
15 (E) such other legal or equitable relief as the court deems appropriate.

16 29 U.S.C. § 1132(g)(2).

17 “The general rule of law is that upon default the factual allegations of the  
18 complaint, except those relating to the amount of damages, will be taken as true.”  
19 *Geddes*, 559 F.2d at 560; *see also Wecosign, Inc. v. IFG Holdings, Inc.*, 845 F. Supp.  
20 2d 1072, 1079 (C.D. Cal. 2012) (“[A]llegations of the amount of damages suffered are  
21 not necessarily taken as true.”). For the purposes of a default judgment in an ERISA  
22 action, audit reports are sufficient to establish the amount of underpaid contributions,  
23 interest, and liquidated damages. *See Cent. Cal. IBEW/NECA Pension Tr. v. Ozzimo*  
24 *Elec., Inc.*, No. C 13-03800 JSW, 2015 WL 1883906, at \*3 (N.D. Cal. Apr. 22, 2015);  
25 *Bd. of Trs. of Laborers Health & Welfare Tr. Fund for N. Cal. v. C & L Coatings, Inc.*,  
26 No. C 12-1368 PJH (MEJ), 2012 WL 7748318, at \*7 (N.D. Cal. Dec. 18, 2012); *Bd. of*  
27 *Trs. v. KMA Concrete Const. Co.*, No. C-10-05774 JCS, 2011 WL 7446345, at \*3 (N.D.  
28 Cal. Dec. 20, 2011). Courts have also considered monthly reports from contributors as  
well. *Bay Area Painters v. Alta Specialty*, No. C06-06996 MJJ, 2008 WL 114931, at  
\*4 (N.D. Cal. Jan. 10, 2008) (relying on monthly contribution reports created by  
Defendants to calculate contributions owed). However, conclusory declarations alone

1 are insufficient to support the amount of damages in a default judgment. *See Rubicon*  
2 *Glob. Ventures, Inc. v. Chongqing Zongshen Grp. Imp./Exp. Corp.*, No. 3:05-CV-  
3 01809-HA, 2013 WL 4498829, at \*1 (D. Or. Aug. 20, 2013), *aff'd in part, vacated in*  
4 *part sub nom. Rubicon Glob. Ventures, Inc. v. Chongqing Zongshen Grp. Imp./Exp.*  
5 *Corp.*, 630 F. App'x 655, 658 (9th Cir. 2015) (vacating the default judgment where  
6 Plaintiffs' own conclusory declarations were the basis of the damages calculation and a  
7 hearing was not held).

8 The Court determines that the Trust Funds seek the following amounts in  
9 damages: (1) fringe benefit contributions of \$503,885.97, (2) liquidated damages of  
10 \$496,309.39, (3) prejudgment interest of \$182,222.47. (Hidalgo Decl. ¶ 14; Mot. 11.)  
11 Here, the Trust Funds proffers Towne Inc.'s monthly reports as proof of its missed  
12 payments of fringe benefit contributions. The Trusts Funds attach the monthly reports  
13 and a summary of the reports as an exhibit to Mr. Hidalgo's declaration. (Hidalgo Decl.  
14 ¶¶ 11–12; Hidalgo Decl. Ex. 8, ECF Nos. 28–41; Hidalgo Decl. Ex. 9, ECF No. 27-2.)  
15 The Trust Funds also attach interest calculations and a total breakdown. (Hidalgo Decl.  
16 ¶¶ 12–14; Hidalgo Decl. Ex. 10, ECF No. 27-3; Hidalgo Decl. Ex. 11, ECF No. 27-4.)  
17 The Court finds the attached evidence satisfactory. *See Bay Area Painters*, 2008 WL  
18 114931, at \*4. Accordingly, the Court awards **\$503,885.97** in missed contribution  
19 payments, **\$496,309.39** in liquidated damages, and **\$182,222.47** in prejudgment  
20 interest.<sup>2</sup> The total damages are **\$1,187,417.83**.

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<sup>2</sup> Liquidated Damages were calculated by taking 10% of the delinquent contributions. (*See* Hidalgo Decl. ¶12.) Interest was calculated by taking 7% per annum of the delinquent contributions. (*See* Hidalgo Decl. ¶¶ 12–13.)



1 **D. Attorneys' Fees**

2 According to Local Rule 55-3, a judgment of this amount would entitle Plaintiffs  
3 to attorney's fees of \$27,348.36 (2% of the amount over \$100,000.00 (\$1,087,417.83)  
4 equals \$21,748.36, plus \$5600). C.D. Cal. L.R. 55-3; see e.g. *Constr. Laborers Tr.*  
5 *Funds for S. Cal. Admin. Co. v. Anzalone Masonry, Inc.*, 316 F. Supp. 3d 1192, 1203  
6 (C.D. Cal. 2018); *Bd. of Directors of Motion Picture Indus. Pension Plan v. Supremacy*  
7 *The Movie, LLC*, No. 2:16-CV-00103-SVW-SS, 2016 WL 11527306, at \*3 (C.D. Cal.  
8 June 2, 2016) (awarding attorneys' fees pursuant to Local Rule 55-3). Here, the Trust  
9 Funds request attorneys' fees lower than those awarded by the fee schedule—in the  
10 amount of \$23,603.91. (Jensen Decl. ¶ 7.) As the Court deems that an award of  
11 attorney's fees calculated based on the Local Rule schedule is reasonable, the Court  
12 awards **\$27,348.36**. As Trust Funds fails to specify its litigation costs, the Court awards  
13 none.

14 **V. CONCLUSION**

15 For the reasons discussed above, the Court **GRANTS** Plaintiffs' Motion for  
16 Default Judgment as to Defendant Towne Inc. and awards the following:

- 17 **1. \$503,885.97 in missed contribution payments,**  
18 **2. \$496,309.39 in liquidated damages,**  
19 **3. \$182,222.47 in prejudgment interest, and**  
20 **4. \$27,348.36 in attorney's fees.**

21  
22 **IT IS SO ORDERED.**

23  
24 March 9, 2020

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27 **OTIS D. WRIGHT, II**  
28 **UNITED STATES DISTRICT JUDGE**