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

TRUSTEES OF THE OPERATING
ENGINEERS PENSION TRUST,
TRUSTEES OF THE OPERATING
ENGINEERS HEALTH AND WELFARE
FUND, TRUSTEES OF THE
OPERATING ENGINEERS VACATION-
HOLIDAY SAVINGS TRUST, and
TRUSTEES OF THE OPERATING
ENGINEERS TRAINING TRUST,

Plaintiffs,

v.

COLEMAN CONSTRUCTION, INC., a
California corporation,

Defendant,

Case No. 2:17-cv-08170-ODW-MRW

**ORDER GRANTING PLAINTIFFS’
MOTION FOR DEFAULT
JUDGMENT [14]**

I. INTRODUCTION

Plaintiffs, Trustees of the Operating Engineers Pension Trust, Trustees of the Operating Engineers Health and Welfare Fund, Trustees of the Operating Engineers Vacation-Holiday Savings Trust, and Trustees of the Operating Engineers Training Trust (collectively, “Trustees”) bring this action against Defendant Coleman Construction, Inc. (“Coleman”) for (1) breach of a written collective bargaining agreement and violation of the Employee Retirement Income Security Act (“ERISA”), and (2) breach of written contract. (*See* Compl., ECF No. 1.) Coleman has failed to

1 respond to the Complaint, the Clerk entered default on December 22, 2017, and
2 Trustees now move for entry of default judgment against Coleman. (ECF Nos. 12,
3 14.) For the reasons discussed below, the Court **GRANTS** the Motion. (ECF No.
4 14.)¹

5 **II. BACKGROUND**

6 **A. Factual Background**

7 Plaintiffs are the Trustees of four express trusts (collectively, the “Trusts”)
8 created pursuant to written declarations of trust (“Trust Agreements”) between the
9 International Union of Operating Engineers, Local Union No. 12, and various
10 construction multi-employer associations in Southern California and Southern
11 Nevada. (Compl. ¶ 5.) The Trusts are now, and were at all times material to this
12 action, labor-management multiemployer trusts created and maintained pursuant to
13 section 302(c)(5) of the Labor Marketing Regulatory Act [29 U.S.C. § 186(c)(5)].
14 (*Id.*)

15 Coleman is an employer and on January 21, 2014, Coleman executed and
16 delivered a written collective bargaining agreement (“CBA”) to Local Union No. 12.
17 (*Id.* ¶ 9.) In the CBA, Coleman agreed to be bound by the Master Labor Agreement
18 (“Master Agreement”) and signed written acknowledgements and acceptances of each
19 of the Trust Agreements. (*Id.*) As a result, Coleman was required to submit monthly
20 reports to the Trustees, listing the work performed by its covered employees and the
21 number of hours worked by or paid to these employees. (*Id.* ¶ 16(A).) Based on these
22 calculations, Coleman agreed to pay fringe benefit contributions for each hour worked
23 or paid. (*Id.*) These amounts were due on a monthly basis. (*Id.* ¶ 16(C).) In the
24 event of a default, Coleman also agreed to pay the Trustees all legal and auditing costs
25 in connection with the collection of any delinquency. (*Id.* ¶ 25.)

26
27
28 ¹ Having carefully considered the papers filed in support of and in opposition to the instant Motion,
the Court deems the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; L.R.
7-15.

1 As required, Coleman submitted monthly reports to the Trustees reflecting work
2 performed by Coleman’s employees during the months of May 2017, June 2017,
3 August 2017, and September 2017. (*Id.* ¶ 17.) However, Trustees allege that
4 Coleman failed to pay or, to timely pay, the required fringe benefit contributions—
5 outlined in the submitted monthly reports and totaling \$29,797.04—in violation of the
6 Trust Agreements, Master Agreement, and Coleman’s statutorily-mandated obligation
7 under ERISA § 515. (*Id.*) Pursuant to the Master Agreement, if Coleman failed to
8 pay fringe benefit contributions, Coleman would be considered delinquent and would
9 pay the Trustees the greater of \$25.00 per month or 10 percent (10%) of the total
10 amount then due as liquidated damages for each delinquency. (*Id.* ¶ 21.)

11 On July 26, 2017, Coleman entered into a written settlement agreement
12 (“Settlement Agreement”) with the Trustees to resolve the amounts owed between
13 March 2017 and June 2017. (*Id.* ¶ 29; Decl. of Bernardo Ramos (“Ramos Decl.”) ¶
14 15, ECF No. 16.) In the Settlement Agreement, Coleman admitted that it owed
15 Trustees \$26,712.96 and agreed to pay that amount, plus interest on the declining
16 balance of that total sum at the rate of eight percent (8%) per annum from July 15,
17 2017, until the balance was paid in full. (Compl. ¶ 30.) Both parties agreed that this
18 sum would be paid in twelve monthly installments of \$2,323.72 each. (*Id.*) The
19 Settlement Agreement also required Coleman to timely report and pay fringe benefit
20 contributions to the Trustees pursuant to the Master Agreement and related Trust
21 Agreements. (*Id.*) Coleman agreed that if it failed to timely pay the monthly
22 installments, or failed to adhere to its monthly contribution obligations under the
23 Master Agreement, the amount owed pursuant to the Settlement Agreement would
24 become immediately due. (*Id.*)

25 Under the Settlement Agreement, Trustees received only two installment
26 payments from Coleman, totaling \$4,647.44. (Ramos Decl. ¶ 18.) Trustees allege
27 that Coleman breached the Settlement Agreement because Coleman failed to timely
28 pay the remaining fringe benefit contributions owed based on its monthly reports since

1 August 2017. (Compl. ¶ 31.) Trustees also allege that Coleman has failed to pay its
2 monthly installments due under the Settlement Agreement since September 2017.
3 (Ramos Decl. ¶ 18.) Trustees provided Coleman with written notice of its default, but
4 Coleman failed to timely cure the breach. (Compl. ¶ 31.) Trustees allege they are
5 entitled to the \$23,326.57 balance due under the Settlement Agreement for the work
6 performed from March 2017 through October 2017, and \$9,156.95 for unpaid fringe
7 benefit contributions for the work performed from August 2017 through October
8 2017. (Mot. 5, ECF No. 15.)

9 **B. Procedural Background**

10 On November 8, 2017, Trustees filed a Complaint against Coleman for two
11 claims: (1) breach of CBA and violation of § 515 of ERISA, and (2) breach of written
12 contract (Settlement Agreement). (*See* Compl.) Trustees seek payment of the
13 delinquent fringe benefit contributions, prejudgment interest, liquidated damages, and
14 reasonable attorneys' fees and costs.² (*Id.*)

15 Trustees served Coleman on November 27, 2017, but Coleman failed to plead,
16 respond, or otherwise defend in the present action. (ECF Nos. 9, 12.) As a result, on
17 December 21, 2017, Trustees requested that the Clerk to enter default against
18 Coleman, and the Clerk entered a default on December 22, 2017. (ECF Nos. 11–12.)
19 Shortly thereafter, Trustees moved for entry of default judgment against Coleman.
20 (ECF No. 14.) That Motion is now before the Court.

21 **III. LEGAL STANDARD**

22 Before a court can enter a default judgment against a defendant, a plaintiff must
23 satisfy the procedural requirements for default judgment set forth in Federal Rules of
24 Civil Procedure 54(c) and 55(a), as well as Local Rule 55-1. Local Rule 55-1 requires

25
26 ² In their Complaint, Trustees request that the Court (1) order Coleman to post and deliver
27 either a good faith deposit, or a performance bond, and (2) order the creation of a
28 constructive trust on all applicable property and order the transfer of the applicable property
to the Trustees. (*Id.* ¶ 27.) However, the Trustees do not move for Default Judgment
regarding this equitable relief and, therefore, the Court does not address it.

1 that the movant submit a declaration establishing: (1) when and against whom default
2 was entered; (2) identification of the pleading entering default; (3) whether the
3 defaulting party is a minor, incompetent person, or active service member; and (4) that
4 the defaulting party was properly served with notice. *Vogel v. Rite Aid Corp.*, 992 F.
5 Supp. 2d 998, 1006 (C.D. Cal. 2014).

6 Federal Rule of Civil Procedure 55(b)(2) authorizes district courts discretion to
7 grant default judgment after the Clerk enters default under Rule 55(a). *Aldabe v.*
8 *Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). When moving for a default judgment,
9 the well-pleaded factual allegations in the complaint are accepted as true, with the
10 exception that allegations as to the amount of damages must be proved. *Televideo*
11 *Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917–19 (9th Cir. 1987) (per curiam); *see also*
12 Fed. R. Civ. P. 54(c) (“[a] default judgment must not differ in kind from, or exceed in
13 amount, what is demanded in the pleadings”).

14 In exercising its discretion, the Court considers the *Eitel* factors: (1) the
15 possibility of prejudice to plaintiff; (2) the merits of plaintiff’s substantive claim; (3)
16 the sufficiency of the complaint; (4) the sum of money at stake; (5) the possibility of a
17 dispute concerning material facts; (6) whether defendant’s default was due to
18 excusable neglect; and (7) the strong policy underlying the Federal Rules of Civil
19 Procedure favoring decisions on the merits. *Eitel v. McCool*, 782 F.2d 1470, 1471–72
20 (9th Cir. 1986).

21 **IV. DISCUSSION**

22 **A. Procedural Requirements**

23 Trustees have satisfied the procedural requirements for the entry of a default
24 judgment against Coleman. The Clerk entered a default against Defendant on
25 December 22, 2017. (ECF No. 12.) Trustees’ counsel declares that: (1) Coleman is
26 not an infant or incompetent person; (2) Coleman is not covered under the
27 Servicemembers Civil Relief Act, and (3) he served Coleman with the Motion for
28 Default judgment. (Decl. of Michael Y. Jung (“Jung Decl.”) ¶¶ 7–12, ECF No. 18.)

1 Trustees have therefore complied with the Federal Rules of Civil Procedure 54(c) and
2 55, as well as Local Rule 55-1.

3 **B. *Eitel* Factors**

4 The Court concludes that the *Eitel* factors weigh in favor of entering a default
5 judgment. The Court will discuss each factor in turn.

6 **1. Trustees Would Suffer Prejudice**

7 The first *Eitel* factor asks whether the plaintiff will suffer prejudice if a default
8 judgment is not entered. *PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1177
9 (C.D. Cal. 2002). Coleman has failed to participate in this action, and without a
10 default judgment, Trustees will have no other recourse for recovery. Therefore, this
11 factor favors entry of default judgment.

12 **2. Trustees Brought Meritorious Claims and Trustees' Complaint Was**
13 **Sufficiently Pleaded**

14 The second and third *Eitel* factors “require that a plaintiff ‘state a claim on
15 which [it] may recover.’” *PepsiCo*, 238 F. Supp. 2d at 1175; *Philip Morris USA, Inc.*
16 *v. Castworld Prods., Inc.*, 219 F.R.D. 494, 499 (C.D. Cal. 2003). Trustees assert two
17 claims against Coleman: (1) breach of the CBA and violation of ERISA § 515; and (2)
18 breach of written contract (Settlement Agreement). (*See Compl.*)

19 **a. Breach of CBA and ERISA Violation**

20 Under ERISA, “[e]very employer who is obligated to make contributions to a
21 multiemployer plan under the terms of the plan or under the terms of a collectively
22 bargained agreement shall, to the extent not inconsistent with law, make such
23 contributions in accordance with the terms and conditions of such plan or such
24 agreement.” 29 U.S.C. § 1145; *see also Winterrowd v. David Freedman & Co., Inc.*,
25 724 F.2d 823, 826 (9th Cir. 1984). If the employer fails to do so, the plan or a plan
26 fiduciary may bring an action to recover the unpaid contributions. 29 U.S.C.
27 § 1132(d)(1); *Bd. of Trustees of Bay Area Roofers Health & Welfare Trust Fund v.*
28 *Westech Roofing*, 42 F. Supp. 3d 1220, 1224 (N.D. Cal. 2014).

1 Here, Trustees allege that Coleman was obligated to make monthly
2 contributions to the Trustees under the terms of a CBA. (Compl. ¶ 16.) Coleman
3 provided monthly reports to Trustees, but failed to pay \$9,157.95 in fringe benefit
4 contributions. (Ramos Decl., Exs. G–H.) Further, Trustees allege that Coleman
5 admitted in its monthly reports that that the unpaid fringe benefits were owed to
6 Trustees. (Compl. ¶ 29.) While the contribution owed for work performed in October
7 2017 did not become delinquent until after the Complaint was filed, the Complaint
8 expressly includes a claim for additional amounts of fringe benefit contributions that
9 would later be established by proof. (*Id.* ¶ 18); *see N. California Glaziers*
10 *Architectural Metal & Glass Workers Welfare Tr. v. Straight Line Caulking &*
11 *Waterproofing*, No. C 99-0683 CRB, 1999 WL 375611, at *1 (N.D. Cal. June 7,
12 1999) (“A court may enter judgment for contributions owed and liquidated damages
13 for contributions that become delinquent after the complaint is filed.”).

14 As an employer obligated under the terms of the CBA to make contributions to
15 the Trustees, Coleman’s failure to make such contributions constitutes a violation of
16 ERISA section 515. *See* 29 U.S.C. § 1145. As such, the Court finds that Trustees
17 have sufficiently pleaded a meritorious claim for breach of CBA and to recover
18 delinquent contributions under ERISA, whether occurring before or after the
19 Complaint was filed.

20 **b. Breach of Written Settlement Agreement**

21 To prevail on its breach of contract claims, Trustees must prove (1) the
22 existence of a contract, (2) performance by Trustees, (3) breach by Coleman, and (4)
23 damage to Trustees as a result of Coleman’s breach. *See Landstar Ranger, Inc. v.*
24 *Parth Enters., Inc.*, 725 F. Supp. 2d 916, 920 (C.D. Cal. 2010).

25 Trustees’ Complaint, taken as true, adequately alleges all four elements of a
26 claim for breach of contract. (Compl.); *see Geddes v. United Fin. Grp.*, 559 F.2d 557,
27 560 (9th Cir. 1977) (“[U]pon default[,] the factual allegations of the complaint, except
28 those relating to the amount of damages, will be taken as true.”).

1 First, Trustees allege they entered into a written Settlement Agreement with
2 Coleman. (Compl. ¶ 29.) The Settlement Agreement was executed and signed by
3 both parties. (Ramos Decl., Ex. E.) Second, Trustees sufficiently allege they
4 substantially performed their obligations under the Settlement Agreement by
5 providing Coleman written notice of its failure to comply with the terms of the
6 agreement. (Comp. ¶ 31.) Third, Coleman breached the agreement by failing to pay
7 Trustees the required fringe benefit contributions under the CBA and section 515 of
8 ERISA, and only paid Trustees two of the twelve monthly installments due under the
9 Settlement Agreement. (*Id.* ¶ 31; Ramos Decl. ¶ 17–18.) Fourth, Trustees allege total
10 damages of \$43,296.33, plus post-judgment interest, that they incurred as a direct
11 result of Coleman’s failure to pay fringe benefit contributions. (Mot. 20, ECF No.
12 15.) These damages consist of \$23,326.57 for amounts still owed by Coleman under
13 the Settlement Agreement, \$9,157.95 for Coleman’s unpaid fringe benefit
14 contributions, \$168.46 in prejudgment interest, \$915.80 in liquidated damages,
15 \$9,277.55 in attorneys’ fees and litigation expenses, and \$450.00 in costs. (Ramos
16 Decl., Exs. E–H; Jung Decl., Exs. A–B.)

17 Trustees have sufficiently pleaded a meritorious claim for breach of contract
18 against Coleman, and the Court addresses the correct calculation of the alleged
19 damages below. *Geddes*, 559 F.2d at 560 (“The general rule of law is that upon
20 default the factual allegations of the complaint, except those relating to the amount of
21 damages, will be taken as true.”).

22 3. The Amount at Stake Does Not Overcome Other Factors in Favor of 23 Default Judgment

24 The fourth *Eitel* factor balances the sum of money at stake with the “seriousness
25 of the action.” *Lehman Bros. Holdings Inc. v. Bayporte Enters., Inc.*, No. C 11–0961–
26 CW (MEJ), 2011 WL 6141079, at *7 (N.D. Cal. Oct. 7, 2011). The amount at stake
27 must not be disproportionate to the harm alleged. *Id.* Default judgments are
28 disfavored where the sum of money requested is too large or unreasonable in relation

1 to a defendant's conduct. *Truong Giang Corp. v. Twinstar Tea Corp.*, No. C 06–
2 03594 JSW, 2007 WL 1545173, at *12 (N.D. Cal. May 29, 2007).

3 The total amount Trustees seek to recover is \$43,296.33, plus post-judgment
4 interest, as itemized above. (Ramos Decl., Exs. E–H; Jung Decl., Exs. A–B.)
5 Trustees have presented sufficient evidence that the amount they seek is directly
6 proportional to the amounts due and owing under the Settlement Agreement, and
7 ERISA. (*See* Ramos Decl., Exs. A–H.) The alleged damages are supported by
8 verifiable monthly reports and well-documented schedules of expenses. (*Id.*) The
9 Court finds that the amount at stake is reasonably proportionate to the harm caused by
10 Coleman's failure to pay contributions and subsequent breach of the Settlement
11 Agreement. Thus, the amount at stake favors entry of default judgment.

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

13 The next *Eitel* factor considers the possibility that material facts are disputed.
14 *PepsiCo*, 238 F. Supp. 2d at 1177. The general rule is that a defaulting party admits
15 the facts alleged in the complaint to be taken as true. *Geddes*, 559 F.2d at 560. As
16 discussed, Trustees have adequately alleged the facts necessary to establish the claims
17 in the Complaint, and Coleman has not challenged the validity of Trustees' allegations
18 because Coleman failed to answer. (*See* ECF No. 12.) The facts as pleaded are also
19 supported by documentary evidence. Therefore, the Court finds that this factor
20 weighs in favor of default judgment.

21 **5. Defendant's Default Was Not Due to Excusable Neglect**

22 There is little possibility of excusable neglect and default judgment is favored
23 when the defendant fails to respond after being properly served. *See Wecosign, Inc.*,
24 845 F. Supp. 2d at 1082. Here, Trustees served Coleman with the Complaint on
25 November 27, 2017, and the present motion on February 9, 2018. (ECF Nos. 9, 19.)
26 Additionally, Trustees repeatedly advised Coleman of the delinquencies prior to filing
27 this motion, yet Coleman failed to participate in this litigation in any meaningful way.
28

1 (Jung Decl. ¶ 13–14.) Coleman has made no showing of excusable neglect.
2 Accordingly, the sixth *Eitel* factor favors entry of a default judgment.

3 **6. Decision on the Merits**

4 In *Eitel*, the court maintained that “[c]ases should be decided upon their merits
5 whenever reasonably possible.” *Eitel*, 782 F.2d at 1472. However, where, as here, a
6 defendant fails to answer the plaintiff’s complaint, “a decision on the merits [is]
7 impractical, if not impossible.” *See PepsiCo*, 238 F. Supp. 2d at 1177. Because
8 Coleman failed to respond to Trustees’ Complaint, the Court finds that the seventh
9 *Eitel* factor does not preclude entry of a default judgment. (ECF No. 45.)

10 **C. Damages**

11 In an action to recover delinquent contributions, the Court must award:

12 (A) the unpaid contributions,

13 (B) interest on the unpaid contributions,

14 (C) an amount equal to the greater of--

15 (i) interest on the unpaid contributions, or

16 (ii) liquidated damages provided for under the plan in an amount
17 not in excess of 20 percent (or such higher percentage as may be
18 permitted under Federal or State law) of the amount determined by
19 the court under subparagraph (A),

20 (D) reasonable attorney’s fees and costs of the action, to be paid by the
21 defendant, and

22 (E) such other legal or equitable relief as the court deems appropriate.

23 29 U.S.C. § 1132(g)(2). Plaintiffs cannot rely solely on allegations to establish
24 damages, for “even a defaulting party is entitled to have its opponent produce some
25 evidence to support an award of damages.” *LG Elecs., Inc. v. Advance Creative*
26 *Computer Corp.*, 212 F. Supp. 2d 1171, 1178 (N.D. Cal. 2002); *see also Wecosign,*
27 *Inc.*, 845 F. Supp. 2d at 1079 (“[A]llegations of the amount of damages suffered are
28 not necessarily taken as true.”). Here, in addition to unpaid contributions, Trustees
request the Court award prejudgment interest, liquidated damages, attorneys’ fees,
costs, and post-judgment interest. (Mot. 20.) The Court addresses each request in
turn.

1 **1. Amount Owed Under Settlement Agreement**

2 Trustees seek \$23,326.57 for amounts still owed by Coleman under the
3 Settlement Agreement. (*Id.*) According to the Settlement Agreement, Coleman
4 agreed to “pay to the Trusts the principal sum of \$26,712.96, plus amortized interest
5 thereon at the rate of 8% per annum accruing from July 15, 2017, by paying the Trusts
6 \$2,323.72 on or before August 15, 2017, and a like amount on or before the fifteenth
7 (15th) day of each month until all principal and interest due under this Settlement
8 Agreement has been paid in full.” (Ramos Decl. ¶ 17, Ex. E, p. 67.) Trustees have
9 only received two installment payments of \$2,323.72, which Trustees prove by way of
10 a Schedule of payments. (*Id.* ¶ 18, Ex. F.) Therefore, the amount requested by
11 Trustees under the Settlement Agreement is legitimate and warranted. Accordingly,
12 the Court awards Trustees a total of \$23,326.57 amounts still owed by Coleman under
13 the Settlement Agreement.

14 **2. Unpaid Contributions**

15 Trustees also seek \$9,157.95 for Coleman’s unpaid fringe benefit contributions.
16 (Mot. 20.) Trustees submit monthly reports from Coleman establishing the number of
17 hours worked by Coleman employees, and the corresponding required contributions.
18 (Ramos Decl., Ex. G.) Trustees also set forth calculations in the declaration of
19 Bernardo Ramos, calculating interest due on the fringe benefit contributions. (*Id.*, Ex.
20 H.) The Court awards Trustees a total of \$9,157.95 for unpaid fringe benefit
21 contributions owed by Coleman, pursuant to 29 U.S.C. § 1132(g)(2)(A). This brings
22 Trustees’ total damages for the amount owed under the Settlement Agreement and
23 unpaid contributions to \$32,484.52. (*Id.*)

24 **3. Prejudgment Interest**

25 Trustees also seek prejudgment interest on the unpaid contributions owed by
26 Coleman based on the monthly reports submitted, accruing from August 2017 through
27 October 2017. (Mot. 8.) Under ERISA, prejudgment interest is mandatory and is
28 “determined by using the rate provided under the plan, or, if none, the rate prescribed

1 under section 6621 of title 26.” 29 U.S.C. § 1132(g)(2). Here, the Master Agreement
2 does not provide an interest rate. (Mot. 7; Ramos Decl. ¶ 8, Ex. B–C.) Therefore,
3 interest is calculated pursuant to 26 U.S.C. § 6621(a), which states “[t]he
4 underpayment rate established under this section shall be the sum of – (A) the Federal
5 short-term rate determined under subsection (b), plus (B) 3 percentage points.” IRS
6 Revenue Ruling 2017-25 provides that the applicable interest rate during the relevant
7 time period—September 2017 through the March 2018 hearing date— is 4% annum.
8 (Mot. 8; Ramos Decl. ¶ 20, Ex. H.)

9 Trustees argue the interest owed by Coleman therefore totals \$168.46 and is
10 calculated from the date the contributions became due through the date paid, or
11 unpaid, and through the date of the hearing on this motion (March 19, 2018). (Mot. 8;
12 Ramos Decl. ¶ 20, Ex. H.) Moreover, Trustees are entitled to prejudgment interest
13 because Trustees prayed for such damages in the Complaint. (Compl. ¶ 24.); *see* Fed.
14 R. Civ. P. 54 (“A default judgment must not differ in kind from, or exceed in amount,
15 what is demanded in the pleadings.”). The Court concludes that the delinquency
16 spreadsheet and related documents sufficiently evidence Trustees’ entitlement to
17 \$168.46 in prejudgment interest. (Ramos Decl. ¶ 19–20, Ex. H.)

18 **4. Liquidated Damages**

19 Trustees also request \$915.80 in liquidated damages. (Mot. 8.) Under 29
20 U.S.C. § 1332, liquidated damages on unpaid contributions are mandatory and are
21 awarded at the rate provided for in the applicable agreement, or an amount equal to
22 the prejudgment interest, whichever is greater. *See* 29 U.S.C. § 1132(g)(2)(C);
23 *Operating Eng’rs Pension Tr. v. Beck Eng’g & Surveying Co.*, 746 F.2d 557, 569 (9th
24 Cir. 1984). Here, the prejudgment interest on the delinquent fringe benefit
25 contributions totals \$168.46. (Mot. 8.) In contrast, the CBA provides for 10%
26 liquidated damages, equaling \$915.80. (Ramos Decl. ¶ 21.) Because the prejudgment
27 interest is less than the interest provided by the CBA, the Court finds that Trustees are
28

1 entitled to the liquidated damages in the amount of \$915.80 based on the unpaid
2 contributions owed for the months of August 2017 through October 2017. (*Id.*)

3 **5. Attorneys' Fees**

4 Trustees also request \$9,277.55 in attorneys' fees and litigation expenses.
5 (Mot. 11; Jung Decl., Exs. A–B.) Trustees use the lodestar method to calculate
6 attorneys' fees. (*Id.*) Under the Local Rules for this district, however, attorneys' fees
7 awarded upon default judgment are generally calculated according to a fee schedule.
8 C.D. Cal. L.R. 55-3. When “[a]n attorney claim[s] a fee in excess of this schedule
9 [he] may file a written request at the time of entry of the default judgment” and the
10 Court “shall hear the request and render judgment for such fees as the Court may
11 deem reasonable.” *Id.* Because Trustees submit a timely request, the Court must
12 determine whether the proposed attorneys' fees are reasonable. *See Aiuppy v. Set*
13 *Glob. Inc.*, No. CV1307198DDPPJWX, 2015 WL 5838461, at *2 (C.D. Cal. Oct. 5,
14 2015) (where counsel requests a fee award in excess of that provided in the Local
15 Rules, “the Court [must] determine if the departure from the Local Rules is reasonable
16 under the lodestar method”).

17 Attorneys' fees under ERISA § 502(g)(1) “are calculated using the lodestar
18 approach, which multipl[ies] the number of hours reasonably expended by the
19 attorney(s) on the litigation by a reasonable hourly rate.” *McElwaine v. U.S.W., Inc.*,
20 176 F.3d 1167, 1173 (9th Cir. 1999). The Court then determines whether the hours
21 spent and the rate charged were reasonable.

22 A district court has “wide latitude in determining the number of hours that were
23 reasonably expended by the prevailing lawyers.” *Sorenson v. Mink*, 239 F.3d 1140,
24 1147 (9th Cir. 2001). The fee applicant “bears the burden of documenting the
25 appropriate hours expended in litigation and must submit evidence in support of hours
26 worked.” *Gates v. Deukmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). From June
27 2017, through the date of filing the Motion for Default Judgment, attorneys and
28 paralegals from Laquer, Urban, Clifford & Hodge spent 31.6 hours on this matter.

1 (Jung Decl. ¶ 2–3.) This total consists of 1.9 hours billed by Brian Ray Hodge (BRH),
2 0.8 hours billed by Susan Graham Lovelace (SGL), 26.2 hours billed by Michael Y.
3 Jung (MYJ), and 2.7 hours billed by Kimberly A. Morrison (KAM). (*Id.* ¶ 3.) The
4 firm’s billing records provide detailed time records describing the work performed.
5 (*Id.*, Ex. A); *see also Perkins v. Mobile Hous. Bd.*, 847 F.2d 735, 738 (11th Cir. 1988)
6 (“Sworn testimony that, in fact, it took the time claimed is evidence of considerable
7 weight on the issue of the time required in the usual case.”). Considering the
8 Complaint and the evidence and briefing submitted in support of Trustees’ Motion for
9 Default Judgment, the Court finds that the number of hours performed is reasonable.
10 Jung also declares the hours spent were reasonably necessary. (Jung Decl. ¶ 5); *see*
11 *also Perkins*, 847 F.2d at 738.

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

18 Trustees seek \$360.00 per hour for the services of attorney BRH, \$360 per hour
19 for attorney SGL, \$300.00 per hour for attorney MYJ, and \$110.00 per hour for
20 paralegal KAM. (Jung Decl. ¶ 3.) Based on the hours worked, Trustees request a
21 total of \$9,129.00 in attorneys’ fees, consisting of \$648.00 for BRH’s services,
22 \$275.00 for SGL’s services, \$7,860.00 for MYJ’s services, and \$297.00 for KAM’s
23 services. (*Id.*) According to the Declaration of Angelo T. Nicodemo, an accountant
24 who regularly reviews legal bills for his clients, “the hourly rates currently charged to
25 Trust Funds with which [he] is familiar range from a low of \$190.00 per hour to
26 \$400.00 per hour or higher, with a majority of law firms charging between \$200.00
27 per hour and \$360.00 per hour.” (Decl. of Angelo T. Nicodemo (“Nicodemo Decl.”) ¶
28 4, ECF No. 17.)

1 Moreover, Trustees’ counsel outline their experience representing various Taft-
2 Harley multi-employer trusts for over forty years. (Jung Decl. ¶ 5(i).) BRH has been
3 licensed to practice law in California since 1970, has represented various trusts, and
4 has lectured frequently on ERISA collection issues. (*Id.*) SGL is a partner at the law
5 firm, obtained her J.D. in 1992, and since 2003, her practice has primarily involved
6 handling collection actions for Taft-Harley multi-employer trust funds. (*Id.*) KAM is
7 a certified paralegal and has worked for the firm since 1997. (*Id.*)

8 Therefore, the Court finds that the attorneys of Laquer, Urban, Clifford, &
9 Hodge LLP have demonstrated their skill and experience so as to justify the hourly
10 rates. *See Hawkins-Dean v. Metro. Life Ins. Co.*, No. 2:03-CV-01115ER, 2007 WL
11 2735684, at *3 (C.D. Cal. Sept. 18, 2007) (awarding \$575 per hour for senior partner
12 time and \$350 per hour for associate time in ERISA case).

13 Finally, the Court must look to the *Kerr* factors³ in determining whether the
14 lodestar figure is reasonable and if it should be adjusted. *Kerr v. Screen Extras Guild,*
15 *Inc.*, 526 F.2d 67, 70 (9th Cir. 1975), *abrogated on other grounds by City of*
16 *Burlington v. Dague*, 505 U.S. 557 (1992). When looking at the totality of the
17 circumstances, and considering the Declaration of Michael Jung, none of
18 the *Kerr* factors indicate the Court should adjust the lodestar figure. (*See* Jung Decl. ¶
19 5); *see Blum*, 465 U.S. at 898–901 (noting that alterations in the lodestar fee are only
20 warranted in exceptional cases). Thus, \$9,129.00 is a reasonable amount of attorneys’
21 fees, and the Court awards it in full.

22 **6. Litigation Expenses**

23 _____
24 ³ The *Kerr* factors assess reasonableness of attorneys’ fees, and are not determinative, and are
25 largely subsumed by the lodestar calculation itself. *Clark v. City of Los Angeles*, 803 F.2d 987, 990–
26 91 (9th Cir. 1986). They include: (1) the time and labor required; (2) the novelty and difficulty of
27 the questions presented; (3) the skill requisite to perform the legal services properly; (4) the
28 preclusion of employment by the attorney due to acceptance of the case; (5) the customary 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 Trustees also argue they are entitled to their litigation expenses in the total
2 amount of \$148.55, including \$133.25 for costs related to copying, printing, and
3 scanning, \$15.00 for attorney service fee, and \$0.30 for online research costs. (Jung
4 Decl. ¶ 6, Ex. B.) Trustees contend that these expenses are recoverable as ‘reasonable
5 attorneys’ fees’ under 29 U.S.C. § 1132(g)(2)(D), because they are customarily billed
6 separate from, and in addition to, the hourly rate charged by attorneys in the relevant
7 market. (*Id.*); *see Trustees of Const. Indus. & Laborers Health & Welfare Tr. v.*
8 *Redland Ins. Co.*, 460 F.3d 1253, 1259 (9th Cir. 2006); *Yip v. Little*, 519 F. App’x
9 974, 977 (9th Cir. 2013) (internal citation omitted) (“Costs are a category of expenses
10 distinct from attorney’s fees under 29 U.S.C. § 1132(g)(1). However, if it is ‘the
11 prevailing practice in the local [legal] community’ to separately bill reasonable
12 litigation expenses to the client, lawyers may recover those expenses as ‘attorneys[’]
13 fees.’”). Trustees provide Nicodemo’s declaration, which explains that it is the
14 standard practice in the Trust Fund Community to bill reasonable litigation expenses
15 to the client. (Nicodemo Decl. ¶ 6.) Therefore, the Court awards Trustees the
16 requested litigation expenses as reasonable attorneys’ fees.

17 **7. Cost**

18 Trustees also seek \$450.00 in costs incurred pursuing this action, which
19 includes the \$400.00 filing fee and \$50.00 to serve the Complaint on Coleman. (Jung
20 Decl. ¶ 6, Ex. B.) Pursuant to 29 U.S.C. § 1132(g)(2)(D), costs of the action are
21 recoverable. Here, Trustees’ filing fees and fees for service of process are reasonable
22 and recoverable, and, thus, the Trustees may file a Notice of Application to the Clerk
23 to Tax Costs, after the Court enters judgment. C.D. Cal. L.R. 54-3, 54-3.1, 54-4.2.

24 **8. Post-Judgment Interest**

25 Finally, Trustees seek post-judgment interest. (Mot. 20; Compl. ¶¶ 24, 30; First
26 Claim for Relief, ¶ 3; Second Claim for Relief, ¶ 6.) Pursuant to 28 U.S.C. § 1961(a),
27 post-judgment interest is appropriate on any money judgment in a civil case recovered
28 in a district court. *See Trustees of Operating Eng’rs Pension v. Joel Silverman &*

1 *Assocs., Inc.*, No. CV 08-5410 GAF (CTX), 2009 WL 10670632, at *6 (C.D. Cal. Jan.
2 30, 2009). Post-judgment interest is “calculated from the date of the entry of
3 judgment, at a rate equal to the weekly average 1-year constant maturity Treasury
4 yield, as published by the Board of Governors of the Federal Reserve System, for the
5 calendar week preceding the date of the judgment.” 28 U.S.C. § 1961(a).
6 Accordingly, the Court grants Trustees’ request for post-judgment interest as set forth
7 in § 1961(a).

8 //

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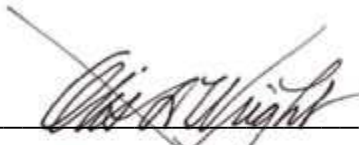
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11 VI. CONCLUSION

12 For the reasons stated above, the Court **GRANTS** Trustees’ Motion for Entry of
13 Final Default Judgment. (ECF No. 14.) The Court awards Trustees’ with \$43,296.33
14 in damages, plus post judgment interest. Upon entry of judgment, the Clerk of the
15 Court shall close the case.

16
17 **IT IS SO ORDERED.**

18
19 March 19, 2018

20
21 

22 _____
23 **OTIS D. WRIGHT, II**
24 **UNITED STATES DISTRICT JUDGE**