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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BOARD OF TRUSTEES ON BEHALF
OF THE TILE SETTERS AND
FINISHERS OF NORTHERN
CALIFORNIA DEFINED BENEFIT
PENSION TRUST AND THE TILE
SETTERS AND FINISHERS OF
NORTHERN CALIFORNIA HEALTH
AND WELFARE TRUST

Plaintiff,

v.

SHANE ALEXANDER CUSTOM TILE
AND STONE, INC.

Defendant.

No. 2:14-cv-2740-MCE-KJN

ORDER AND
FINDINGS AND RECOMMENDATIONS

INTRODUCTION

Presently pending before the court is a motion for default judgment filed against defendant Shane Alexander Custom Tile and Stone, Inc. (“defendant”) by plaintiff Board of Trustees on behalf of the Tile Setters and Finishers of Northern California Defined Benefit Pension Trust (“Pension Trust”) and the Tile Setters and Finishers of Northern California Health and Welfare Trust (“Health and Welfare Trust”) (collectively, “plaintiff”). (ECF No. 7.) Defendant failed to file an opposition to the motion in accordance with Local Rule 230(c). At the April 30, 2015

1 hearing on the motion, attorney Teague Paterson appeared telephonically on behalf of plaintiff,
2 and no appearance was made on behalf of defendant.

3 After carefully considering the briefing and other documentation in support of the motion,
4 the oral argument at the hearing, the court’s record, and the applicable law, the court recommends
5 that the motion be GRANTED IN PART on the terms outlined below.

6 **BACKGROUND**

7 The background facts are taken from the operative original complaint, unless otherwise
8 noted. (See Complaint, ECF No. 1 [“Compl.”].)

9 Plaintiff is the plan sponsor and administrator of two ERISA¹-regulated multiemployer
10 benefit plans, the Pension Trust and the Health and Welfare Trust. (Compl. ¶ 4.) The Pension
11 Trust was created and maintained for the purpose of collecting and receiving contributions and
12 providing pension benefits to eligible participants in accordance with an Agreement and
13 Declaration of Trust (“Pension Trust Agreement”) and collective bargaining agreements between
14 the Tile Setters and Finishers Union of Northern California (“Union”) and employers engaged in
15 activities affecting commerce and their trade association, The Associated Tile Contractors of
16 Northern California (“Association”). (Compl. ¶¶ 5, 8, Ex. A; Declaration of Teague P. Paterson,
17 ECF No. 9 [“Paterson Decl.”] ¶ 35, Ex. 8.) Similarly, the Health and Welfare Trust was created
18 and maintained for the purpose of collecting and receiving contributions and providing health and
19 welfare benefits to eligible participants in accordance with an Agreement and Declaration of
20 Trust (“Health and Welfare Trust Agreement”) and the collective bargaining agreements between
21 the Union and the Association. (Compl. ¶¶ 6, 23, Ex. G; Paterson Decl. ¶ 35, Ex. 8.) Defendant
22 is an employer located in Rocklin, California, that previously participated in the Pension Trust
23 and Health and Welfare Trust on behalf of its employees. (Compl. ¶ 7.) Defendant also joined the
24 Association around August of 2009. (Compl. ¶¶ 5, 10, Ex. B.)

25 Defendant participated in the Pension Trust since at least January of 2004, submitting
26 monthly contributions on behalf of covered employees, with such employees accruing benefits

27 ¹ The acronym “ERISA” stands for the Employee Retirement Income Security Act of 1974, 29
28 U.S.C. §§ 1001 et seq.

1 under the Pension Trust's pension plan. (Compl. ¶¶ 9, 11.) On April 29, 2008, in accordance
2 with ERISA, plaintiff adopted a Withdrawal Liability Policy, which provides for the assessment
3 of employer withdrawal liability on contributing employers that withdraw from the Pension Trust.
4 (Compl. ¶ 12, Ex. C.) Thereafter, around July 1, 2013, defendant ceased making contributions to
5 the Pension Trust on behalf of its covered employees, which constituted a withdrawal from the
6 Pension Trust for purposes of ERISA and the Withdrawal Liability Policy. (Compl. ¶¶ 13-14.)
7 Plaintiff then commissioned from the plan's actuary an assessment of defendant's withdrawal
8 liability, which amounted to \$128,465.00 in principal. (Compl. ¶¶ 15, 41, Ex. D.) That
9 assessment and a demand for payment of such employer withdrawal liability were served on
10 defendant no later than December 17, 2013. (Compl. ¶¶ 16-18.) Along with the demand for
11 payment, and in accordance with the Withdrawal Liability Policy and ERISA, plaintiff offered a
12 payment schedule, with the first installment due within 60 days. (Compl. ¶ 18, Ex. E, see also
13 Ex. C at Section V.) However, defendant subsequently failed to make any installment payment;
14 nor did defendant respond to, or request review of, that assessment. (Compl. ¶ 19.) Only on
15 April 15, 2014, after plaintiff had sent another payment demand on April 2, 2014, defendant
16 indicated that it did not consider itself bound by the Pension Trust's withdrawal liability
17 provisions. (Compl. ¶¶ 20-21, Ex. F.)

18 Defendant also participated in the Health and Welfare Trust since at least 2004,
19 submitting monthly contributions on behalf of covered employees, with such employees receiving
20 health benefits pursuant to the Health and Welfare Trust. (Compl. ¶¶ 24, 26.) The Health and
21 Welfare Trust Agreement and the applicable collective bargaining agreement required prompt
22 payment of monthly contributions on or before the 10th day of the month following the month in
23 which the employee's work was performed, and specified that liquidated damages would be
24 assessed for failure to timely pay the required contributions. (Compl. ¶¶ 25, 28, Ex. G at §§ 7.01,
25 7.07; Paterson Decl. Ex. 8 at Article XII.) Between May 2010 and April 2013, defendant
26 untimely remitted contributions to the Health and Welfare Trust, and plaintiff consequently
27 assessed liquidated damages for such untimely contributions in accordance with the Health and
28 Welfare Trust Agreement. (Compl. ¶¶ 27-28, Exs. H, I.) According to plaintiff, defendant paid a

1 portion, but not all, of the liquidated damages owed, and defendant ceased participating in the
2 Health and Welfare Trust around June 30, 2013. (Compl. ¶¶ 7, 29.) On March 17, 2014, plaintiff
3 sent a demand for payment, which indicated that defendant still owed a principal amount of
4 \$14,174.37 in liquidated damages, but defendant did not respond to that demand. (Compl. ¶¶ 29-
5 34, Exs. H, I.)

6 Plaintiff commenced this action on November 21, 2014. In its complaint, plaintiff asserts
7 causes of action under ERISA and the trust documents for: (1) collection of employer withdrawal
8 liability related to the Pension Trust, as well as associated interest and liquidated damages; and
9 (2) collection of liquidated damages for late contributions to the Health and Welfare Trust, as
10 well as interest. (Compl. ¶¶ 35-51 & Prayer.) The complaint also seeks attorneys' fees and costs
11 incurred in attempting to recover the above-mentioned relief. (Id.)

12 After plaintiff effectuated service of process on defendant on December 4, 2014 (ECF No.
13 4), defendant failed to respond to the complaint. As such, upon plaintiff's request, the Clerk of
14 Court entered defendant's default on January 21, 2015. (ECF Nos. 5-6.) The instant motion for
15 default judgment followed. (ECF No. 7.) The motion was served on defendant by mail. (Id.)

16 LEGAL STANDARD

17 Pursuant to Federal Rule of Civil Procedure 55, default may be entered against a party
18 against whom a judgment for affirmative relief is sought who fails to plead or otherwise defend
19 against the action. See Fed. R. Civ. P. 55(a). However, "[a] defendant's default does not
20 automatically entitle the plaintiff to a court-ordered judgment." PepsiCo, Inc. v. Cal. Sec. Cans,
21 238 F. Supp. 2d 1172, 1174 (C.D. Cal. 2002) (citing Draper v. Coombs, 792 F.2d 915, 924-25
22 (9th Cir. 1986)). Instead, the decision to grant or deny an application for default judgment lies
23 within the district court's sound discretion. Aldabe v. Aldabe, 616 F.2d 1089, 1092 (9th Cir.
24 1980). In making this determination, the court considers the following factors:

- 25 (1) the possibility of prejudice to the plaintiff, (2) the merits of
26 plaintiff's substantive claim, (3) the sufficiency of the complaint,
27 (4) the sum of money at stake in the action[,] (5) the possibility of a
28 dispute concerning material facts[,] (6) whether the default was due
to excusable neglect, and (7) the strong policy underlying the
Federal Rules of Civil Procedure favoring decisions on the merits.

1 Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986).

2 As a general rule, once default is entered, well-pleaded factual allegations in the operative
3 complaint are taken as true, except for those allegations relating to damages. TeleVideo Sys., Inc.
4 v. Heidenthal, 826 F.2d 915, 917-18 (9th Cir. 1987) (per curiam) (citing Geddes v. United Fin.
5 Group, 559 F.2d 557, 560 (9th Cir. 1977) (per curiam)); accord Fair Housing of Marin v. Combs,
6 285 F.3d 899, 906 (9th Cir. 2002). In addition, although well-pled allegations in the complaint
7 are admitted by a defendant's failure to respond, "necessary facts not contained in the pleadings,
8 and claims which are legally insufficient, are not established by default." Cripps v. Life Ins. Co.
9 of N. Am., 980 F.2d 1261, 1267 (9th Cir. 1992) (citing Danning v. Lavine, 572 F.2d 1386, 1388
10 (9th Cir. 1978)); accord DIRECTV, Inc. v. Hoa Huynh, 503 F.3d 847, 854 (9th Cir. 2007) (stating
11 that a defendant does not admit facts that are not well-pled or conclusions of law); Abney v.
12 Alameida, 334 F. Supp. 2d 1221, 1235 (S.D. Cal. 2004) ("[A] default judgment may not be
13 entered on a legally insufficient claim"). A party's default does not establish the amount of
14 damages. Geddes, 559 F.2d at 560.

15 DISCUSSION

16 Appropriateness of the Entry of Default Judgment Under the Eitel Factors

17 1. *Factor One: Possibility of Prejudice to Plaintiff*

18 The first Eitel factor considers whether the plaintiff would suffer prejudice if default
19 judgment is not entered, and such potential prejudice to the plaintiff militates in favor of granting
20 a default judgment. See PepsiCo, Inc., 238 F. Supp. 2d at 1177. Here, plaintiff would face
21 prejudice if the court did not enter a default judgment, because plaintiff would be without another
22 recourse against defendant. Accordingly, the first Eitel factor favors the entry of a default
23 judgment.

24 2. *Factors Two and Three: The Merits of Plaintiff's Substantive Claims and* 25 *the Sufficiency of the Complaint*

26 The court considers the merits of plaintiff's substantive claims and the sufficiency of the
27 complaint together below because of the relatedness of the two inquiries. The court must
28 consider whether the allegations in the complaint are sufficient to state a claim that supports the

1 relief sought. See Danning, 572 F.2d at 1388; PepsiCo, Inc., 238 F. Supp. 2d at 1175.

2 Under ERISA, “[a] plan fiduciary...who is adversely affected by the act or omission of
3 any party under this subtitle with respect to a multiemployer plan...may bring an action for
4 appropriate legal or equitable relief, or both.” 29 U.S.C. § 1451(a)(1). “In any action under
5 [section 1451] to compel an employer to pay withdrawal liability, any failure of the employer to
6 make any withdrawal liability payment within the time prescribed shall be treated in the same
7 manner as a delinquent contribution (within the meaning of section 1145 of this title).” Id. §
8 1451(b). In turn, section 1145 provides that “[e]very employer who is obligated to make
9 contributions to a multiemployer plan under the terms of the plan or under the terms of a
10 collectively bargained agreement shall, to the extent not inconsistent with law, make such
11 contributions in accordance with the terms and conditions of such plan or such agreement.” Id. §
12 1145. Furthermore, “[i]n any action under this subchapter by a fiduciary for or on behalf of a
13 plan to enforce section 1145 of this title in which a judgment in favor of the plan is awarded, the
14 court shall award the plan—(A) the unpaid contributions, (B) interest on the unpaid contributions,
15 (C) an amount equal to the greater of—(i) interest on the unpaid contributions, or (ii) liquidated
16 damages provided for under the plan in an amount not in excess of 20 percent (or such higher
17 percentage as may be permitted under Federal or State law) of the amount determined by the
18 court under subparagraph (A), (D) reasonable attorney’s fees and costs of the action, to be paid by
19 the defendant, and (E) such other legal or equitable relief as the court deems appropriate.” Id. §
20 1132(g)(2).

21 Here, the well-pled allegations of the complaint, the exhibits attached to the complaint,
22 and the documentary evidence submitted along with plaintiff’s motion, as outlined above,
23 adequately demonstrate that defendant failed to pay assessed employer withdrawal liability
24 related to the Pension Trust, and failed to pay in full liquidated damages for defendant’s late
25 contributions to the Health and Welfare Trust, in violation of ERISA and the applicable trust
26 documents. Consequently, plaintiff, as a fiduciary of the Pension Trust and Health and Welfare
27 Trust, may seek recovery of such payments on behalf of the trusts. Therefore, plaintiff’s claims
28 have merit. The exact relief to which plaintiff is entitled is discussed in greater detail below.

1 In light of the court’s conclusion that plaintiff’s claims have merit and are sufficiently
2 pled, the second and third Eitel factors favor the entry of a default judgment.

3 3. *Factor Four: The Sum of Money at Stake in the Action*

4 Under the fourth factor cited in Eitel, “the court must consider the amount of money at
5 stake in relation to the seriousness of Defendant’s conduct.” PepsiCo, Inc., 238 F. Supp. 2d at
6 1176-77; see also Philip Morris USA, Inc. v. Castworld Prods., Inc., 219 F.R.D. 494, 500 (C.D.
7 Cal. 2003). Although the sum of money sought in this case is not insignificant, it bears a
8 relationship to the seriousness of defendant’s conduct, given that defendant failed to make the
9 payments required by the trust documents and ERISA. As plaintiff points out, for benefit plans
10 such as the Pension Trust and Health and Welfare Trust to remain sustainable, it is vital that
11 employers timely pay contributions and other liabilities to the trusts. Moreover, as discussed
12 below, the requested relief is specifically authorized and contemplated by the trust documents and
13 ERISA. Under these circumstances, the court concludes that this factor does not militate against
14 the entry of a default judgment.

15 4. *Factor Five: The Possibility of a Dispute Concerning Material Facts*

16 Because the court may assume the truth of well-pled facts in the complaint (except as to
17 damages) following the clerk’s entry of default, there is no likelihood that any genuine issue of
18 material fact exists. See, e.g., Elektra Entm’t Group Inc. v. Crawford, 226 F.R.D. 388, 393 (C.D.
19 Cal. 2005) (“Because all allegations in a well-pleaded complaint are taken as true after the court
20 clerk enters default judgment, there is no likelihood that any genuine issue of material fact
21 exists”); accord Philip Morris USA, Inc., 219 F.R.D. at 500; PepsiCo, Inc., 238 F. Supp. 2d at
22 1177. As such, the court concludes that the fifth Eitel factor favors a default judgment.

23 5. *Factor Six: Whether the Default Was Due to Excusable Neglect*

24 In this case, there is simply no indication in the record that defendant’s default was due to
25 excusable neglect. Accordingly, this Eitel factor favors the entry of a default judgment.

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1 6. *Factor Seven: The Strong Policy Underlying the Federal Rules of Civil*
2 *Procedure Favoring Decisions on the Merits*

3 “Cases should be decided upon their merits whenever reasonably possible.” Eitel, 782
4 F.2d at 1472. However, district courts have concluded with regularity that this policy, standing
5 alone, is not dispositive, especially where a defendant fails to appear or defend itself in an action.
6 PepsiCo, Inc., 238 F. Supp. 2d at 1177; see also Craiglist, Inc. v. Naturemarket, Inc., 694 F.
7 Supp. 2d 1039, 1061 (N.D. Cal. 2010). Accordingly, although the court is cognizant of the policy
8 in favor of decisions on the merits—and consistent with existing policy would prefer that this
9 case be resolved on the merits—that policy does not, by itself, preclude the entry of default
10 judgment.

11 In sum, after weighing all the Eitel factors, the court concludes that plaintiff is entitled to a
12 default judgment against defendant, and recommends that such a default judgment be entered.
13 All that remains is a determination of the specific relief to which plaintiff is entitled.

14 Relief To Be Awarded

15 The court addresses the relief to be awarded pursuant to each cause of action separately
16 below.

17 *First Cause of Action – Employer Withdrawal Liability Related to Pension Trust*

18 Defendant was assessed as owing \$128,465.00 in principal withdrawal liability. (Compl.
19 ¶¶ 15, 41, Ex. D; Paterson Decl. ¶ 36.) Because defendant failed to seek review of that
20 assessment in accordance with the Withdrawal Liability Policy and ERISA, defendant is deemed
21 to have waived any right to contest that assessment. (See Compl. Ex. C at Section VIII, “Appeals
22 and Arbitration”); see also 29 U.S.C. §§ 1399(b)(2), 1401(a)-(b). As such, \$128,465.00 in
23 principal withdrawal liability should be awarded.

24 Pursuant to the Withdrawal Liability Policy and ERISA, defendant also owes interest on
25 the principal withdrawal liability, which accrues at the rate of 7.25% per annum, and amounts to
26 \$24,782.50 through March 2015. (Complaint ¶¶ 42-43, Ex. C at Section IX; Paterson Decl. ¶ 37);
27 see also 29 U.S.C. § 1132(g)(2)(B).

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1 Furthermore, pursuant to the Withdrawal Liability Policy and ERISA, defendant is liable
2 for payment of liquidated damages equal to 20% of the principal withdrawal liability amount
3 (\$128,465.00), which is \$25,693.00. (Compl. ¶¶ 44-45, Ex. C at Section IX; Paterson Decl. ¶ 38);
4 see also 29 U.S.C. § 1132(g)(2)(C).

5 Second Cause of Action – Liquidated Damages for Late Contributions to Health
6 and Welfare Trust

7 Consistent with ERISA, the Health and Welfare Trust Agreement provides that “the
8 amount of damages for failure to pay in full within the time limits specified herein shall be, by
9 way of liquidated damages and not assessment of penalty, the sum of ten percent (10%) of the
10 amount due or the sum of fifty dollars (\$50.00), whichever is greater.” (Compl. Ex. G at Section
11 7.07); see also 29 U.S.C. § 1132(g)(2)(C). Pursuant to that provision of the Health and Welfare
12 Trust Agreement, defendant still owes a principal amount of \$14,174.37 in liquidated damages,
13 which should be awarded. (Compl. ¶¶ 27-30, 32-34, Exs. H, I; Paterson Decl. ¶ 40.)

14 Plaintiff also sought \$2,709.63 in interest on such liquidated damages. (Paterson Decl. ¶
15 41.) However, plaintiff failed to point to any specific provision of the Health and Welfare Trust
16 Agreement or ERISA allowing for interest on liquidated damages. Moreover, at the hearing,
17 plaintiff withdrew the request for interest on liquidated damages, thereby obviating the need for
18 resolution of that issue.

19 Costs and Attorneys’ Fees

20 As noted above, ERISA and the trust documents specifically authorize an award of
21 reasonable attorneys’ fees and costs incurred in bringing the action. (Compl. Ex. C at Section IX,
22 Ex. G at Section 7.07); see also 29 U.S.C. § 1132(g)(2)(D).

23 Here, plaintiff requests a total amount of \$477.28 in costs related to filing fees, service of
24 process, and postage, which is reasonable and should be awarded. (Paterson Decl. ¶ 20.)

25 Plaintiff also seeks attorneys’ fees already incurred in the amount of \$11,425.00 (based on
26 47.5 hours of work at an hourly rate of \$250.00).² (Paterson Decl. ¶¶ 7, 17-19, Ex. 5.) The court

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28 ² 47.5 hours multiplied by \$250 actually equals \$11,875, but it appears from the billing records
that plaintiff’s counsel declined to charge plaintiff for all of the hours worked, resulting in a

1 finds plaintiff's counsel's hourly rate to be reasonable based on rates customarily charged for
2 similar work by attorneys in the Eastern District of California. The court has also carefully
3 reviewed plaintiff's counsel's billing entries, and finds that the billed hours were reasonably
4 spent. The court notes that plaintiff's counsel in his briefing further requested an additional
5 \$1,500.00 to prepare for, travel to and from, and attend the hearing on the motion. (Paterson
6 Decl. ¶ 19.) However, given that defendant did not oppose the motion, and in light of the fact
7 that the court permitted plaintiff's counsel to appear telephonically at the relatively brief hearing,
8 at most one (1) additional hour of time at the hourly rate of \$250 is warranted for preparation and
9 appearance at the hearing. Indeed, at the hearing, plaintiff's counsel himself candidly conceded
10 that the additional fee request related to the hearing should be reduced. Thus, the court finds that
11 plaintiff should be awarded a total of \$11,675.00 in attorneys' fees.

12 CONCLUSION

13 For the foregoing reasons, IT IS HEREBY RECOMMENDED that:

- 14 1. Plaintiff's motion for default judgment (ECF No. 7) be GRANTED IN PART on
15 the terms outlined below.
- 16 2. Judgment be entered in plaintiff's favor and against defendant.
- 17 3. With respect to the Pension Trust, plaintiff be awarded \$128,465.00 in principal
18 withdrawal liability, plus interest thereon in the amount of \$24,782.50, as well as liquidated
19 damages in the amount of \$25,693.00.
- 20 4. With respect to the Health and Welfare Trust, plaintiff be awarded liquidated
21 damages in the amount of \$14,174.37.
- 22 5. Plaintiff be awarded costs in the amount of \$477.28.
- 23 6. Plaintiff be awarded attorneys' fees in the amount of \$11,675.00.
- 24 7. The Clerk of Court be directed to close this case.

25 IT IS ALSO HEREBY ORDERED that plaintiff shall forthwith serve a copy of this order
26 and findings and recommendations on defendant by U.S. mail at its last-known address, and file a
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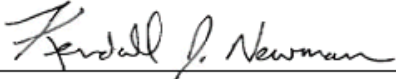
28 reduced amount of \$11,425.00.

1 proof of service to that effect.

2 These findings and recommendations are submitted to the United States District Judge
3 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)
4 days after being served with these findings and recommendations, any party may file written
5 objections with the court and serve a copy on all parties. Such a document should be captioned
6 “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections
7 shall be served on all parties and filed with the court within fourteen (14) days after service of the
8 objections. The parties are advised that failure to file objections within the specified time may
9 waive the right to appeal the District Court’s order. Turner v. Duncan, 158 F.3d 449, 455 (9th
10 Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

11 IT IS SO ORDERED AND RECOMMENDED.

12 Dated: May 1, 2015

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15 KENDALL J. NEWMAN
16 UNITED STATES MAGISTRATE JUDGE
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