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United States District Court
For the Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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| THE BOARD OF TRUSTEES, in their |) | Case No. 08-3577 SC |
| capacities as Trustees of the |) | |
| LABORERS HEALTH AND WELFARE TRUST |) | |
| FUND FOR NORTHERN CALIFORNIA; |) | <u>DEFAULT JUDGMENT</u> |
| LABORERS VACATION-HOLIDAY TRUST |) | |
| FUND FOR NORTHERN CALIFORNIA; |) | |
| LABORERS PENSION TRUST FUND FOR |) | |
| NORTHERN CALIFORNIA; and LABORERS |) | |
| TRAINING AND RETRAINING TRUST FUND |) | |
| FOR NORTHERN CALIFORNIA, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | |
| |) | |
| NORTH COAST CONTRACTING, INC., a |) | |
| California Corporation, |) | |
| |) | |
| |) | |
| Defendant. |) | |
| |) | |
| |) | |

I. INTRODUCTION

The present matter comes before the Court on the Motion for Default Judgment ("Motion") filed by the plaintiffs Board of Trustees et al. ("Plaintiffs"). Docket No. 7. Pursuant to Federal Rule of Civil Procedure 55(a), the Clerk of the Court has entered default against the defendant North Coast Contracting, Inc. ("North Coast" or "Defendant"). Docket No. 6. On December

1 1, 2008, this Court issued an Order requesting additional evidence
2 and documentation. Docket No. 17. On December 5, Plaintiffs
3 submitted an affidavit addressing the concerns raised by the
4 Court. Hagan Supp. Decl., Docket No. 18.¹ For the following
5 reasons, it is hereby ORDERED, ADJUDGED and DECREED that:

6 JUDGMENT shall be entered in favor of Plaintiffs Board of
7 Trustees et al., and against Defendant North Coast Contracting.
8

9 **II. BACKGROUND**

10 On July 25, 2008, Plaintiffs filed a suit under sections 1132
11 and 1145 of the Employee Retirement Income Security Act of 1974
12 ("ERISA"), 29 U.S.C. § 1001 et seq., and under section 302 of the
13 Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185. Compl.,
14 Docket No. 1, at 1-2. The suit was brought in response to
15 Defendant's alleged failure to make the required payments to
16 various trust funds and employee benefit plans in violation of a
17 collective bargaining agreement and certain trust agreements.
18 Defendant became subject to the terms and conditions of the
19 Laborers Master Agreement ("Agreement") by virtue of signing a
20 Memorandum of Agreement with the Northern California District
21 Council of Laborers ("Union"). Compl. at 2; Exs. A, B. Although
22 Plaintiffs served Defendant, Defendant failed to respond or
23 otherwise defend the action.

24 According to the Complaint, the Agreement and the Memorandum
25

26 ¹ John Hagan is the Accounts Receivable Manager for the
27 Laborers Funds Administrative Office of Northern California, Inc.
28 He submitted a declaration in support of Plaintiffs' Motion, Docket
No. 11, and one in response to this Court's December 1 Order.

1 of Agreement provided that Plaintiffs are permitted to audit and
2 review all records relevant to the enforcement of the provisions
3 of the various agreements. See Compl. at 3; Ex. A at 9. Pursuant
4 to these provisions, Plaintiffs conducted an audit of Defendant's
5 records for the period between January 2005 and December 2006.
6 Compl. ¶ 11. The audit revealed that Defendant owed delinquent
7 benefit contributions in the amount of \$4,225.28. Id.; Hagan
8 Supp. Decl. ¶ 5; Ex. A. In addition, per provisions in the
9 Agreement and Memorandum of Agreement regarding delinquent
10 contributions, liquidated damages and interest in the amount of
11 \$2,899.85 were assessed. Hagan Supp. Decl. ¶¶ 5-17; Ex. A-D.
12 Finally, pursuant to the Agreement and relevant statutes, the
13 employer is responsible for reasonable attorneys' fees and costs.
14 See Hagan Decl. ¶ 13; 29 U.S.C. § 1132(g)(2).

15
16 **III. DISCUSSION**

17 **A. Legal Standard**

18 After entry of default, the Court may enter a default
19 judgment. Fed. R. Civ. P. 55(b). "However, entry of default does
20 not automatically entitle the non-defaulting party to entry of a
21 default judgment regardless of the fact that the effect of entry
22 of a default is to deem allegations admitted." In re Villegas,
23 132 B.R. 742, 746 (9th Cir. BAP 1991). Rather, "the decision to
24 enter a default judgment is discretionary." Alan Neuman Prods.,
25 Inc. v. Albright, 862 F.2d 1388, 1392 (9th Cir. 1988). First, the
26 Court must "assess the adequacy of service of process on the party
27 against whom default is requested." Bd. of Trs. of the N. Cal.

1 Sheet Metal Workers v. Peters, No. C-00-0395 VRW, 2000 U.S. Dist.
2 LEXIS 19065, at *2 (N.D. Cal. Jan. 2, 2001). Once the Court
3 determines that service was sufficient, it may consider the
4 following factors when exercising its discretion to enter a
5 default judgment:

6 (1) the possibility of prejudice to the
7 plaintiff, (2) the merits of plaintiff's
8 substantive claim, (3) the sufficiency of
9 the complaint, (4) the sum of money at
10 stake in the action, (5) the possibility
11 of a dispute concerning material facts,
12 (6) whether the default was due to
13 excusable neglect, and (7) the strong
14 policy underlying the Federal Rules of
15 Civil Procedure favoring decisions on the
16 merits.

12 Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986). "The
13 general rule of law is that upon default the factual allegations
14 of the complaint, except those relating to the amount of damages,
15 will be taken as true." Geddes v. United Fin. Group, 559 F.2d
16 557, 560 (9th Cir. 1977).

17 **B. Analysis**

18 For the following reasons, the Eitel factors favor default
19 judgment.

20 1. Service of Process

21 Service of process against Defendant was adequate. Federal
22 Rule of Civil Procedure 4(h) provides the standards for service
23 upon corporations, associations, or partnerships. Copies of the
24 summons and complaint were served via mail to Defendant's
25 principal place of business, 67 Magnolia Avenue, # E, Petaluma,
26 California, 94955. See Docket No. 3. This same address appears
27 on the Memorandum Agreement signed by Defendant. See Hagan Decl.

1 Ex. B.

2 2. Prejudice

3 Accepting the allegations in the Complaint as true,
4 Plaintiffs would be prejudiced absent entry of default judgment.
5 Defendant has failed and refused to make required payments into
6 the various trust funds and employee benefit plans, in violation
7 of a collective bargaining agreement and various trust agreements.
8 This failure, if not remedied, will prejudice Plaintiffs.

9 3. Merits and Sufficiency of Complaint

10 This factor also favors entry of default judgment.
11 Plaintiffs have sufficiently pleaded claims under ERISA and the
12 LMRA arising from Defendant's failure to make the required
13 payments to the joint labor-management trust funds and the
14 employee benefit plans.

15 4. Amount of Money at Stake

16 The sum of money at stake weighs in favor of default
17 judgment. Plaintiffs only seek the delinquent contributions owed
18 by Defendant to the various plans, as calculated through an audit
19 that had been previously agreed upon by both parties, in addition
20 to interest and liquidated damages, which were also agreed upon by
21 both parties pursuant to the Agreement.

22 5. Possibility of Dispute Concerning Material Facts

23 Upon entry of default, all well-pleaded facts in the
24 Complaint are taken as true. Geddes, 559 F.2d at 560. After
25 review of the Complaint, the possibility of a dispute concerning
26 material facts appears small. This factor also weighs in favor of
27 default judgment.

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1 6. Whether Default Was Due to Excusable Neglect

2 As noted above, Defendant was properly served. Although the
3 Defendant did not make an appearance or participate in any manner
4 in this action, the Court finds that the possibility that default
5 resulted from the excusable neglect of Defendant is remote. This
6 factor therefore weighs in favor of default judgment.

7 7. Policy for Deciding on the Merits

8 "Cases should be decided on the merits whenever possible."
9 Eitel, 782 F.2d at 1472. The existence of Federal Rule of Civil
10 Procedure 55(b), however, indicates that this preference alone is
11 not dispositive. Where, as here, a defendant fails to respond to
12 a complaint, a decision on the merits is impractical, if not
13 impossible. Ultimately, the preference to decide cases on the
14 merits does not preclude a court from granting default judgment.
15 See, e.g., Pepsico, Inc. v. Cal. Sec. Cans, 238 F. Supp. 2d 1172,
16 1177 (C.D. Cal. 2002).

17 8. Attorneys' Fees and Costs

18 In addition to the delinquent contributions and liquidated
19 damages, Plaintiffs also seek reasonable attorneys' fees. Not
20 only do the underlying agreements provide that all of these costs
21 be borne by the Defendant in an action such as this one, but 29
22 U.S.C. § 1132(g)(2) does as well. See Hagan Decl. ¶ 13.
23 Plaintiffs seek attorneys' fees in the amount of \$2,943.75.
24 Lozano-Batista Decl., Docket No. 8, ¶ 4.² These fees are based on
25 an hourly rate for Plaintiffs' counsel of \$250 and \$275,

26 _____
27 ² Concepcion E. Lozano-Batista is counsel for Plaintiffs.
28

1 respectively, and \$125 for the paralegal. Id. ¶¶ 4, 7.

2 To determine a reasonable attorney fee award, courts employ
3 the lodestar method. Morales v. City of San Rafael, 96 F.3d 359,
4 363 (9th Cir. 1996). "The 'lodestar' is calculated by multiplying
5 the number of hours the prevailing party reasonably expended on
6 the litigation by a reasonable hourly rate." Id. There is a
7 strong presumption that the lodestar figure constitutes reasonable
8 fees, and only in exceptional cases will adjustment of the
9 lodestar be appropriate. Pennsylvania v. Del. Valley Citizens'
10 Council for Clean Air, 478 U.S. 568, 564-65 (1986).

11 In assessing a reasonable hourly rate, courts should consider
12 the prevailing market rate in the community for similar services
13 by lawyers of reasonably comparable skill, experience, and
14 reputation. Blum v. Stenson, 465 U.S. 886, 895 (1984); Cancio v.
15 Fin. Credit Network, No. 04-3755, 2005 WL 1629809, at *1 (N.D.
16 Cal. July 6, 2005). Courts within this district have used
17 different methods and reached different results. Compare Yahoo!,
18 Inc. v. Net Games, Inc., 329 F. Supp. 2d 1179, 1192 (N.D. Cal.
19 2004) (employing complex formula to determine that the average
20 hourly rate in the San Francisco area around 2002 was \$190 per
21 hour), with Cancio, 2005 WL 1629809 at *3 (finding that precedent
22 in the Northern District of California supported hourly rates in
23 2005 of \$345 per hour and \$435 per hour).

24 Determination of a reasonable hourly rate also depends on the
25 skill, experience and reputation of the attorney as well as the
26 complexity of the litigation. Counsel, in her declaration, notes
27 that Plaintiffs' senior counsel was admitted to practice in 1976

1 and for the last 22 years has specialized in ERISA cases. Lozano-
2 Batista Decl. ¶ 5. Lozano-Batista herself is a fifth-year
3 associate and has previously handled ERISA actions. Id. ¶ 6. In
4 light of these facts and the relevant caselaw from this district,
5 the Court concludes that the hourly rates of counsel for
6 Plaintiffs are reasonable.

7 The second lodestar factor is the reasonable number of hours
8 counsel spent prosecuting the case. If the requested number of
9 hours is greater than the number of hours reasonably competent
10 counsel would have billed, then the court should reduce the
11 requested number of hours accordingly. Hensley v. Eckerhart, 461
12 U.S. 424, 434 (1983). In the present case, counsel spent
13 approximately 10 hours prosecuting the case. Lozano-Batista Decl.
14 ¶ 4. The Court finds that such an amount is reasonable in
15 prosecuting a default judgment case.

16 For these reasons, the Court AWARDS attorneys' fees of
17 \$2,943.75 and filing and delivery costs of \$498.25.³

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25 ³ Counsel also seeks \$1,000 in estimated future costs,
26 anticipating "an appearance at the hearing on the motion for
27 default judgment." Lozano-Batista Decl. ¶ 11. This hearing,
28 however, was vacated, and the Court took the matter under
submission on the papers. Because counsel provides no other
explanation to justify this \$1,000, the Court declines to award it.

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IV. CONCLUSION

For the foregoing reasons, it is ORDERED, ADJUDGED, and DECREED that:

JUDGMENT shall be entered in favor of Plaintiffs Board of Trustees et al., and against Defendant North Coast Contracting, Inc. Plaintiffs are AWARDED the following:

1. \$4,225.28 in delinquent contributions;
2. \$2,899.85 in interest and liquidated damages;
3. \$2,943.75 in attorneys' fees; and
4. \$498.25 in costs.
5. The injunctive relief sought by Plaintiffs is DENIED.

IT IS SO ORDERED, ADJUDGED, and DECREED.

Dated: December 9, 2008

UNITED STATES DISTRICT JUDGE