

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN MATEO ELECTRICAL WORKERS
HEALTH CARE TRUST;
INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 617;
SAN MATEO COUNTY ELECTRICAL
CONSTRUCTION INDUSTRY
RETIREMENT TRUST;
SAN MATEO ELECTRICAL WORKERS
EDUCATION AND TRAINING PLAN;
Dominic Nolan, as Trustee of the above
TRUSTS; and the NATIONAL
ELECTRICAL CONTRACTORS
ASSOCIATION, SAN MATEO
CHAPTER,

Plaintiffs,

v.

C&E ELECTRIC, a California sole
proprietorship; and CARLOS ALBERTO
GARCIA MANZANARES, an individual
dba C&E ELECTRIC,

Defendants.

No. C 11-04190 WHA

**ORDER FOR DEFAULT
JUDGMENT**

INTRODUCTION

In this ERISA collection action, plaintiffs seek default judgment against one of two defendants. For the following reasons, the motion is **GRANTED IN PART** and **DENIED IN PART** with leave to amend.

1 **STATEMENT**

2 Defendant C&E Electric was an employer within the meaning of Section 3(5) of ERISA.
3 29 U.S.C. 1002(5). Defendant signed a letter of intent binding it to a collective bargaining
4 agreement between the San Mateo County Chapter of the National Electrical Contractors
5 Association and the International Brotherhood of Electrical Workers, Local 617. The agreement
6 required defendant to pay specific employer contributions, including fringe benefits, into trust
7 funds. The trusts provided benefits to defendant's employees based on hours reported in
8 monthly transmittals (Compl. ¶¶ 5-9).

9 Between June 2011 and September 2011, defendant repeatedly underpaid or failed to pay
10 the required contributions pursuant to the agreement (*id.* ¶ 10). Plaintiffs contend that defendant
11 owes \$283,611.42 in principal for delinquent contributions, \$28,361.14 in liquidated damages,
12 and \$2,558.14 in attorney's fees and costs. Plaintiffs also allege that the trusts require 12%
13 interest per annum on delinquent contributions such that defendant owes \$22,519 in unpaid
14 interest on the principal, \$15,711.16 in unpaid interest on the liquidated damages, and \$93.24
15 per day after January 26, 2012, until judgment is entered (Stephenson Decl. ¶¶ 3-12; Quail Decl.
16 ¶¶ 5-10). At the motion hearing on January 26, 2011, plaintiffs presented a proposed order
17 showing that defendant had paid \$34,643.85 into plaintiffs' trusts. Total judgment sought is
18 therefore \$318,117.01 plus \$93.24 per day after January 26, 2012, until judgment is entered.

19 Plaintiffs filed a complaint on August 24, 2011. Plaintiffs' proof of service indicates that
20 the summons and complaint were delivered to C&E's place of business on September 2, and
21 a copy was mailed to C&E's business address four days later. Motion for entry of default was
22 filed September 27. Default was entered as to Carlos Alberto Garcia Manzanares, an individual
23 dba C&E Electric, on September 29, while entry of default was declined as to C&E on the same
24 day. Default was then entered as to C&E on January 18, 2012, after the court clerk verified that
25 the address at which process was served was C&E's business address. No response from C&E
26 has been received.

1 ANALYSIS

2 1. SUMMARY JUDGMENT.

3 Under FRCP 55(b)(2), a plaintiff can apply for a default judgment against a defendant
4 that has failed to plead or otherwise defend an action. The trial court must consider the
5 following factors when deciding whether or not to grant a motion for default judgment: (1) the
6 possibility of prejudice to the plaintiff; (2) the merits of plaintiff’s substantive claim; (3) the
7 sufficiency of the complaint; (4) the sum of money at stake in the action; (5) the possibility of a
8 dispute concerning material facts; (6) whether the default was due to excusable neglect; and (7)
9 the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the
10 merits. *Eitel v. McCool*, 782 F.2d 1470, 1471–72 (9th Cir. 1986). All but one of these factors
11 favors entry of default judgment against C&E.

12 A. Merits and Sufficiency of the Complaint.

13 In determining liability and entry of default judgment, the general rule is that well-
14 pleaded allegations in the complaint regarding liability are deemed true, except as to the amount
15 of damages. *Fair Housing of Marin v. Combs*, 285 F.3d 899, 906 (9th Cir. 2002). *Eitel* factors
16 two, three, and five weigh in favor of a default judgment. There appears no possibility of dispute
17 concerning material facts. Plaintiffs have sufficiently supported their allegation that C&E
18 Electric was contractually obligated to pay contributions into plaintiffs’ trust funds, and would
19 pay liquidated damages at 10% for each month the payment was delinquent (Quail Exh. B).
20 They have provided monthly statements for the trust funds sent to C&E Electric that total
21 \$283,611.42 for June through September (Quail Exh. C). They have also shown a billing
22 statement for attorney’s fees equal to the amount in the complaint (Quail Exh. D). At the motion
23 hearing, plaintiffs showed that defendant had paid \$34,643.85 into plaintiffs trusts. This payment
24 is therefore subtracted from the amount previously owed. These statements have merit and are
25 sufficient, and default judgment as to these amounts, totaling \$279,886.85, is **GRANTED**.

26 Yet plaintiffs have not provided sufficient support for the claim that they are entitled to
27 12% interest on the principal and liquidated damages of the unpaid contributions. While
28 plaintiffs are certainly entitled to interest, this figure represents around three times the amount

1 of interest dictated by federal statute. 15 U.S.C. 1640(e). Plaintiffs are entitled to the 12%
2 interest rate only if they can show that both parties agreed to this amount, which they have not
3 done. Accordingly, the amounts accounting for the interest owed (\$38,230.16) and interest
4 per day until judgment is entered (\$93.24) are **DENIED** with leave to amend.

5 **B. Remaining Factors.**

6 All but one of the remaining *Eitel* factors likewise favor default judgment with respect
7 to the principal, liquidated damages, and attorney's fees. *First*, the possibility of prejudice to
8 plaintiffs is great. Were the motion denied, the participants and beneficiaries of the health,
9 welfare, pension and fringe benefits plans would not receive their full benefits. *Second*, it is
10 highly unlikely that default was the result of excusable neglect. Summons was hand delivered
11 to the secretary at C&E's front desk on September 2, and four days later a copy was sent to
12 C&E's business address. On September 29, entry of default was declined as to C&E but granted
13 as to Mr. Manzanares, C&E's sole proprietor. The declination of default was not prejudicial,
14 and entry was granted as to C&E on January 18, 2012. Defendant therefore had sufficient notice
15 of plaintiffs' claim. *Third*, although federal policy favors decisions on the merits, this factor
16 does not outweigh the other six factors that point towards summary judgment.

17 *Fourth*, the sum of money at stake in this action is not unreasonable. Default judgment
18 is generally disfavored where large sums of money are involved. *Eitel*, 782 F.2d at 1472.
19 Plaintiffs seek \$318,117.01, and will currently be awarded \$279,886.85, which pales in
20 comparison to the three million dollars at issue in *Eitel*. *US v. Palomba*, 2003 WL 21804813
21 (N.D. Cal. Feb. 20, 2003) (Alsup, J.) (\$330,483.10 was a reasonable sum). This factor favors
22 entry of default judgment.

23 **2. COURT'S DISCRETION WITH RESPECT TO DAMAGES.**

24 Damages in this action are governed by 29 U.S.C. 1145, which states that employers
25 obligated under the terms of a collective bargaining agreement to make contributions into a
26 multi-employer plan *shall* do so. These payments are mandatory, and must be granted without
27 the court's discretion. *Operating Eng'rs Pension Trust v. Reed*, 726 F.2d 513, 514-15 (9th Cir.
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1 1984). Plaintiffs' substantiated claims for the principal, liquidated damages, and attorney's fees
2 owed are therefore automatically granted.

3 **CONCLUSION**

4 For the foregoing reasons, plaintiffs' motion for default judgment against defendant C&E
5 Electric is **GRANTED IN PART** and **DENIED IN PART** with leave to amend. Final judgment will
6 be held until plaintiffs have cured the deficiencies in their complaint with respect to the amount
7 of interest owed.

8 **IT IS HEREBY ORDERED:**

- 9 1. Plaintiffs' motion for default judgment against defendant C&E Electric is
10 **GRANTED** as to the principal, liquidated damages, and attorney's fees.
11 2. Defendant shall pay \$279,886.85 for unpaid contributions, liquidated damages,
12 and attorney's fees.
13 3. Plaintiffs' motion for default judgment as to the interest on the principal and
14 liquidated damages is **DENIED** with leave to amend.

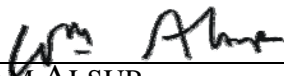
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16 **IT IS SO ORDERED.**

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18 Dated: January 27, 2012.

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WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

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