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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CARPENTERS PENSION TRUST FUND
FOR NORTHERN CALIFORNIA, et al.,

Plaintiffs,

v.

MARCELLINA HERNANDEZ, et al.,

Defendants.

Case No. [20-cv-01778-EMC](#)

**ORDER GRANTING PLAINTIFFS'
MOTION FOR DEFAULT JUDGMENT
AGAINST DEFENDANT MCKEAGUE**

Docket No. 26

Plaintiffs are the Carpenters Pension Trust Fund for Northern California and the Carpenters Annuity Trust Fund for Northern California. They have filed an interpleader complaint against Defendants Marcellina Hernandez and Charlotte McKeague. Currently pending before the Court is Plaintiffs' motion for default judgment as to Ms. McKeague. Having considered the papers submitted, the Court hereby **GRANTS** Plaintiffs' motion for relief, as described below.

I. FACTUAL & PROCEDURAL BACKGROUND

In their interpleader complaint, the Trust Funds have alleged as follows.

- Michael Sanchez Hernandez was a participant in both Trust Funds. See Compl. ¶ 7; see also Price Decl. ¶ 2.
- On May 6, 2005, Mr. Hernandez submitted a form to the Trust Funds naming his mother, Marcellina Hernandez, as his beneficiary. See Compl. ¶ 7.
- On October 31, 2018, at or about 1:00 p.m., Mr. Hernandez passed away with his girlfriend, Charlotte McKeague, present. See Compl. ¶ 8.
- The death certificate for Mr. Hernandez stated that his death resulted from intoxication, blunt force injuries, obstruction of respiration, and drug-induced

United States District Court
Northern District of California

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psychosis. See Compl. ¶ 8.

- Just a few hours before Mr. Hernandez died, the Trust Funds received a new form via email, naming Ms. McKeague as his beneficiary. See Compl. ¶ 9.
- After Mr. Hernandez’s death, both Ms. Hernandez and Ms. McKeague contacted the Trust Funds about his benefits. See Compl. ¶ 10.
- The Trust Funds informed Ms. Hernandez and Ms. McKeague about the competing claims for Mr. Hernandez’s benefits but neither withdrew her claim to the benefits. See Compl. ¶¶ 11-12.
- The Pension Trust Fund benefits are valued at \$76,882.32 (payable over 36 months). See Compl. ¶ 13; see also Price Decl. ¶ 3.
- The Annuity Trust Fund benefits were valued (as of March 4, 2020) at \$53,054.19. See Compl. ¶ 14; see also Price Decl. ¶ 4 (testifying that, as of October 13, 2020, the benefits were valued at \$59,284.21).
- The Trust Funds have no interest in the benefits other than complying with their obligation to pay the benefits to the proper beneficiary. See Compl. ¶ 2.

Ms. Hernandez answered the Trust Funds’ complaint in April 2020. See Docket No. 12 (answer and cross-claim). In the same pleading, she also asserted a cross-claim against Ms. McKeague, alleging that

any purported change of beneficiary from Defendant Marcellina Hernandez to Defendant Charlotte McKeague was and is ineffective, violative of the terms and conditions of the Plans Documents and/or fraudulent in that Ms. McKeague completed the form without Mr. Hernandez’s knowledge or agreement and the purported signature of Mr. Hernandez set forth therein is a forgery. Furthermore, Mr. Hernandez was unconscious and incapacitated at the time the form purporting to change his beneficiary was sent to the Trust Funds.

Cross-Claim ¶ 24.

Several months later, in July 2020, the Trust Funds filed a waiver of service of summons that Ms. McKeague had executed. See Docket No. 20 (waiver). In the waiver, Ms. McKeague acknowledged her understanding that she was obligated to respond to the Trust Funds’ complaint “within 60 days from 05/26/2020, the date when this request was sent,” and that, “[i]f I fail to do

1 so, a default judgment will be entered against me.” Docket No. 20.

2 In September 2020, after Ms. McKeague failed to respond to the complaint, the Trust
3 Funds moved the Clerk of the Court to enter Ms. McKeague’s default. A copy of the motion was
4 served on Ms. McKeague. See Docket No. 23 (motion). The Clerk of the Court entered Ms.
5 McKeague’s default on September 21, 2020. See Docket No. 25 (notice). Thereafter, the Trust
6 Funds filed the currently pending motion for default judgment as to Ms. McKeague. The motion
7 has been served on Ms. McKeague. See Docket No. 26 (motion). The Court has received no
8 opposition to the motion for default judgment.

9 **II. DISCUSSION**

10 A. Service of Summons and Complaint

11 As an initial matter, the Court considers the matter of service of the summons and
12 complaint on Ms. McKeague.

13 Federal Rule of Civil Procedure 4(d) provides in relevant part that “[a]n individual . . . that
14 is subject to service under Rule 4(e) . . . has a duty to avoid unnecessary expenses of serving the
15 summons. The plaintiff may notify such a defendant that an action has been commenced and
16 request that the defendant waive service of a summons.” Fed. R. Civ. P. 4(d). The notice/request
17 for waiver must meet certain requirements – e.g., it must provide a copy of the complaint and a
18 waiver form; it must inform the defendant of the consequences of waiving and not waiving
19 service; and it must give the defendant at least 30 days to return the waiver. See Fed. R. Civ. P.
20 4(d)(1). If the defendant timely returns the waiver, then she “need not serve an answer to the
21 complaint until 60 days after the request was sent.” Fed. R. Civ. P. 4(d)(3).

22 As indicated above, the Trust Funds received a waiver from Ms. McKeague and filed a
23 copy of the waiver with the Court. It appears that the Trust Funds complied with Rule 4(d), and
24 the waiver does not appear to have any deficiencies. Accordingly, “proof of service [of the
25 summons and complaint] is not required” and the summons and complaint are effectively deemed
26 “served at the time of filing the waiver.” Fed. R. Civ. P. 4(d)(4).

27 B. Merits of Motion for Default Judgment

28 As noted above, the Clerk of the Court entered Ms. McKeague’s default on September 21,

1 2020. See Docket No. 25 (notice). After entry of default, a court may grant a default judgment on
2 the merits of the case. See Fed. R. Civ. P. 55. “The district court’s decision whether to enter a
3 default judgment is a discretionary one.” *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir.1980).

4 A court may consider the following factors in exercising such discretion:

5 (1) the possibility of prejudice to the plaintiff, (2) the merits of
6 plaintiff’s substantive claim, (3) the sufficiency of the complaint, (4)
7 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) the strong policy underlying the Federal
Rules of Civil Procedure favoring decisions on the merits.

9 *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986). Because default has already been
10 entered in this case, the Court must construe as true all of “the factual allegations of the complaint,
11 except those relating to the amount of damages.” *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d
12 915, 917-18 (9th Cir. 1987). The Court may also consider evidence submitted in conjunction with
13 the motion for default judgment. Cf. Fed. R. Civ. P. 55 (noting that a “court may conduct hearings
14 . . . when, to enter or effectuate judgment, it needs to [e.g.] establish the truth of any allegation by
15 evidence” or “investigate any other matter”).

16 The Court finds that the Eitel factors weigh in favor of granting default judgment. For
17 example, as to the first factor, if the motion for default judgment were to be denied, then the Trust
18 Funds would likely be prejudiced as they would be stymied from moving forward with this
19 litigation – even though they have no real interest in the case other than ensuring that the benefits
20 go to the proper beneficiary. See *Walters v. Shaw/Guehnemann Corp.*, No. 03-cv-04058, 2004
21 U.S. Dist. LEXIS 11992, at *7 (N.D. Cal. Apr. 15, 2004) (“To deny plaintiff’s motion [for default
22 judgment] would leave them without a remedy. Prejudice is also likely in light of the merits of
23 their claims.”); *Pepsico, Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002) (“If
24 Plaintiffs’ motion for default judgment is not granted, Plaintiffs will likely be without other
25 recourse for recovery.”).

26 As for the fourth Eitel factor, the Trust Funds are not asking for money damages at all – as
27 noted above, they only wish the funds at issue to go to the proper beneficiary. See *Pepsico*, 238
28 F.Supp.2d at 1176 (stating that “the court must consider the amount of money at stake in relation

1 to the seriousness of Defendant’s conduct”).

2 As to the fifth, sixth, and seventh Eitel factors, because Ms. McKeague has not filed an
3 answer to the complaint, there is nothing to suggest that there is a possibility of a dispute
4 concerning material facts. Nor is there any indication that Ms. McKeague’s default was due to
5 excusable neglect. And while public policy favors decisions on the merits, see Eitel, 782 F.2d at
6 1472, Ms. McKeague’s choice not to defend this action renders a decision on the merits
7 “impractical, if not impossible.” PepsiCo, 238 F. Supp. 2d at 1177.

8 Finally, on the second and third Eitel factors – i.e., the merits of the Trust Funds’
9 substantive claims and the sufficiency of those claims – the Ninth Circuit has recognized that an
10 ERISA fiduciary may bring an interpleader action pursuant to 29 U.S.C. § 1132(a)(3)(B)(ii).¹ See
11 Aetna Life Ins. Co. v. Bayona, 223 F.3d 1030, 1034 (9th Cir. 2000) (“hold[ing] that interpleader is
12 a cognizable action under ERISA section 1132(a)(3)(B)(ii)”); see also Metro. Life Ins. Co. v.
13 Marsh, 119 F.3d 415, 418 (6th Cir. 1997) (noting the same).

14 Accordingly, the Court grants the Trust Funds’ motion for default judgment.

15 C. Relief

16 The only issue remaining is what relief should be issued. The Trust Funds’ requested
17 relief does not extend beyond that sought in their complaint. In addition, the relief requested is
18 generally consistent with an interpleader action. Accordingly, the Court grants the main relief
19 sought. More specifically, the Court orders as follows:

20 a. Pursuant to ERISA, 29 U.S.C. § 1132(a)(3)(B)(ii) and Federal Rules of Civil
21 Procedure 22 and 67, the Pension Trust Fund shall deposit with the Court a check
22 in the amount of \$76,882.32 (made payable to the Clerk of the Court), representing
23 the entirety of Mr. Hernandez’s pension benefits. The deposit shall be made by
24 November 30, 2020.

25 b. The Annuity Trust Fund shall value Mr. Hernandez’s annuity benefits as of
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28 ¹ Under § 1132(a)(3)(B)(ii), a civil action may be brought by an ERISA participant, beneficiary, or
fiduciary to obtain equitable relief to enforce the terms of the plan. Here, the Trust Funds have
plan rules regarding designation of beneficiaries. See Price Decl. ¶ 5 & Exs. A-B.

1 November 25, 2020 (the “Valuation Date”). By November 30, 2020, pursuant to
2 ERISA, 29 U.S.C. § 1132(a)(3)(B)(ii) and Federal Rules of Civil Procedure 22 and
3 67, the Annuity Trust Fund shall deposit a check in the valuation amount (made
4 payable to the Clerk of the Court), representing the entirety of Mr. Hernandez’s
5 annuity benefits as valued by the Trust Fund as of the Valuation Date.

6 c. By November 30, 2020, the Trust Funds shall also file a declaration with the Court
7 certifying that both deposits were made and stating the valuation of the annuity
8 benefits. By the same date, the Trust Funds shall serve the declaration on Ms.
9 Hernandez and Ms. McKeague and shall file a proof of service certifying such.

10 d. The Court shall give Ms. Hernandez and Ms. McKeague until December 10, 2020,
11 to file an objection to the valuation of the annuity benefits.

12 e. If no objection is filed on December 10, 2020, then the Court shall dismiss the
13 Trust Funds from the case and order that the Trust Funds, their administrators,
14 employees, agents, and other officers be discharged from any and all liability on
15 account of the claims of Ms. Hernandez and/or Ms. McKeague to the above-
16 described benefit payments (i.e., the funds ordered deposited with the Court).

17 D. Service of the Cross-Claim

18 Because this order contemplates that the Trust Funds will be dismissed from the case, that
19 leaves only Ms. Hernandez’s cross-claim against Ms. McKeague. The joint case management
20 conference indicates that Ms. Hernandez recently obtained an updated address for Ms. McKeague
21 for purposes of service. See Docket No. 27 (Joint CMC St. at 2) (stating that “it is [Ms.]
22 Hernandez’s understanding that [the address Ms. McKeague provided to the Trust Funds] is for
23 mailing only and is not [her] current residential address that can be utilized for personal service”;
24 adding that, on November 9, 2020, Ms. Hernandez obtained an updated address for Ms.
25 McKeague in Fairfield). The Court orders Ms. Hernandez to effect service within 30 days and to
26 file a proof of service certifying that service has been made.

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III. CONCLUSION

For the foregoing reasons, the Court grants the Trust Funds’ motion for default judgment and orders the relief described above. Plaintiffs are directed to serve this order on Ms. McKeague and to file a proof of service certifying that service has been made.

This order disposes of Docket No. 26.

IT IS SO ORDERED.

Dated: November 19, 2020



EDWARD M. CHEN
United States District Judge