

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

OPERATING ENGINEERS' HEALTH
AND WELFARE TRUST FUND FOR
NORTHERN CALIFORNIA, et al.,

Plaintiffs,

v.

VORTEX MARINE CONSTRUCTION
INC.,

Defendant.

Case No. 17-cv-03614-KAW

**ORDER REGARDING ATTORNEY'S
FEES**

Re: Dkt. No. 41

On April 27, 2018, the Court temporarily granted Defendant Vortex Marine Construction Inc.'s motion to set aside entry of default. (Dkt. No. 38 at 1.) The Court's granting of Defendant's motion was conditioned "on Defendant paying Plaintiffs' attorney's fees between September 13, 2017 and April 19, 2018, and Defendant providing the missing contribution reports." (Id. at 9.) The parties were ordered to meet and confer within seven days of the April 27, 2018 order to determine if they could come to an agreement on the amount of attorney's fees. (Id.) In the event the parties could not agree, Plaintiffs were to file a supplemental declaration providing the amount sought within fourteen days of the April 27, 2018 order, and Defendant was to file any objections within seven days of Plaintiffs' supplemental declaration.

On May 11, 2018, Plaintiffs' counsel filed a declaration, stating that Defendant requested Plaintiffs' accounting of fees on April 30, 2018. (Minser Decl. ¶ 4, Dkt. No. 41.) Plaintiffs responded that same day. After Defendant did not respond, Plaintiffs reached out on May 3, 2018. (Minser Decl. ¶ 5.) On May 4, 2018, Defendant again asked for an account of the total fees. (Minser Decl. ¶ 6.) Plaintiffs responded that same day, asking for clarification as to what type of accounting was being requested. (Minser Decl. ¶ 7.) Defendant did not respond until May 9,

1 2018, when it requested a compilation of time and expense records. (Minser Decl. ¶ 8.) Plaintiffs
2 provided the requested compilation on May 10, 2018.

3 In the May 11, 2018 declaration, Plaintiffs state that they have incurred \$15,085.00 in
4 attorney's fees between September 13, 2017 and April 19, 2018, as follows:

Name:	Hours:	Rate:	Total:
Michele R. Stafford	5.4	\$235	\$1,269.00
Matthew P. Minser	40.7	\$230	\$9,361.00
Alicia Wood (paralegal)	33.0	\$135	\$4,455.00
	79.1		\$15,085.00

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9 (Minser Decl. ¶¶ 11-14.) Plaintiffs' counsel explained that this time included communications
10 with their client, communications with Defendant regarding the amounts owed and settlement
11 proposals, preparing a motion for default judgment, opposing Defendant's motion to set aside
12 entry of default, and attending the hearing on Defendant's motion to set aside entry of default.

13 (Minser Decl. ¶¶ 11-13.)

14 Defendant's objections to the attorney's fees sought were due by May 18, 2018;
15 Defendant, however, did not file any objections.

16 Having reviewed Plaintiffs' submission, and in light of Defendant's lack of objections, the
17 Court finds that the amount sought is reasonable. With respect to the billing rate, the Court has
18 previously approved the requested rates for Plaintiffs' counsel. See Dist. Council 16 N. Cal.
19 Health & Welfare Trust Fund v. Northside Installation, Inc., Case No. 17-cv-2892-WHA (KAW),
20 Dkt. No. 30 at 13-14 (Feb. 2, 2018); see also Dist. Council 16 N. Cal. Health & Welfare Trust
21 Fund v. G&S Drywall, Inc., Case No. 17-cv-2786-EDL, 2017 U.S. Dist. LEXIS 189156, at *23-25
22 (N.D. Cal. Oct. 25, 2017). As to the time spent, Plaintiffs have typically spent between 40-55
23 hours on similar ERISA cases in which default judgment was sought; here, however, Plaintiffs had
24 the additional task of opposing Defendant's motion to set aside entry of default, as well as multiple
25 communications with Defendant regarding settling the case. The Court finds the hours billed to be
26 reasonable.

27 Accordingly, the Court determines that Defendant shall pay **\$15,085.00** to Plaintiffs, as
28 well as provide the missing contribution reports, as conditions to the Court setting aside entry of

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default. Failure to complete both these tasks by **June 15, 2018** will result in the Court denying Defendant's motion to set aside entry of default.

IT IS SO ORDERED.

Dated: June 1, 2018


KANDIS A. WESTMORE
United States Magistrate Judge