

United States District Court  
For the Northern District of California

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**\*\*E-filed 07/19/2010\*\***

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

ORANGE COUNTY ELECTRICAL  
INDUSTRY HEALTH AND WELFARE  
TRUST FUND, et al.,

No. C 09-3724 RS

Plaintiffs,

**ORDER GRANTING MOTION FOR  
DEFAULT JUDGMENT**

v.

SOO KIM ELECTRIC CO.,

Defendant.

I. INTRODUCTION

Plaintiffs move for entry of default judgment. A hearing was duly noticed and held, however defendant failed to appear or otherwise respond to the motion. For the reasons stated below, the motion will be granted and default judgment will be entered against defendant Soo Kim Electric Co.

II. BACKGROUND

Orange County Electrical Industry Health and Welfare Trust Fund brought this action in August of 2009, alleging that Soo Kim repeatedly underpaid or failed to pay required contributions to a multi-employment Trust Agreement, in violation of the Employee Retirement Income Security Act and a collective bargaining agreement. Complaint, ¶1, ¶8. 29 U.S.C. § 1132(a), (e), and (g); 29 U.S.C. § 1145. Soo Kim is a signatory to a collective bargaining agreement between the

1 International Brotherhood of Electrical Workers and the National Electrical Contractors  
2 Association. Complaint, ¶6. The collective bargaining agreement requires Soo Kim to submit  
3 monthly transmittals and contributions to plaintiffs, who are Trustees of the Trust Fund. *Id.* The  
4 Trust Fund provides benefits to defendant’s covered employees based upon the hours reported on  
5 monthly transmittals. *Id.*

6 Plaintiffs allege that defendant failed to pay the requisite contributions to the Trust Fund  
7 between November 2008 and June 2009. Complaint ¶8. See also 29 U.S.C. § 1132(g). Plaintiffs  
8 seek \$44,141.70 in damages against Soo Kim, which includes the amount of delinquent  
9 contributions between November 2008 and July 2009, liquidated damages to the Trust, pre-  
10 judgment interest, and attorney fees and costs. Additionally, plaintiffs seek daily prejudgment  
11 interest in the amount \$9.56 from April 15, 2010 until entry of judgment.

### 12 III. STANDARD

13 Following entry of default, courts are authorized to grant default judgment in their  
14 discretion. See Fed. R. Civ. P. 55; *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). In  
15 exercising its discretion, the factors the court may consider include: (1) the possibility of prejudice  
16 to the plaintiff, (2) the merits of plaintiff’s substantive claim, (3) the sufficiency of the complaint,  
17 (4) the sum of money at stake in the action; (5) the possibility of a dispute concerning material facts;  
18 (6) whether the default was due to excusable neglect, and (7) the strong policy underlying the  
19 Federal Rules of Civil Procedure favoring decisions on the merits. *Eitel v. McCool*, 782 F.2d 1470,  
20 1471-72 (9th Cir. 1986). In considering these factors, all factual allegations in the plaintiff’s  
21 complaint are taken as true, except for those relating to damages. *TeleVideo Sys., Inc. v. Heidenthal*,  
22 826 F.2d 915, 917-18 (9th Cir. 1987). As to damages, when those claimed are not readily  
23 ascertainable from the pleadings and the record, the court may (but is not required to) conduct a  
24 hearing to determine the amount of damages. Fed. R. Civ. P. 55(b)(2).

### 25 IV. DISCUSSION

26 In this case, the *Eitel* factors strongly weigh in favor of granting Orange County Electrical  
27 Industry Health and Welfare Trust Fund’s motion for default judgment. The allegations in the  
28 complaint, taken as true, establish the existence of Soo Kim’s obligation to pay and its breach.

1 There is no uncertainty as to the amount of damages, as they are readily calculable from the invoices  
2 and are clearly set out both in the complaint and the declaration submitted in support of this motion.  
3 Soo Kim had notice of this action and the precise amount of damages claimed, and it presumably  
4 understood that it had an obligation to file a response. Under these circumstances, the policy  
5 favoring decisions on the merits must yield to plaintiffs' right to a judicial determination of its  
6 claim.<sup>1</sup> Judgment for Orange County Electrical Industry Health and Welfare Trust Fund will be  
7 entered in the principal amount of \$34,315.97.

8 Orange County Electrical Industry Health and Welfare Trust Fund ordinarily could seek  
9 prejudgment interest at the rate of 10 percent. See 26 U.S.C. § 6621; 29 U.S.C. § 1145. However,  
10 plaintiffs ask that an 8 percent interest rate be applied to all principal owed, based on the fact that  
11 one of the Trust agreements provides for that rate. The outstanding principal on the account is  
12 \$28,921.00, and liquidated damages total \$5,394.97. Therefore, the outstanding damages to the  
13 Trust are \$34,315.97. The Declaration in support of this Motion calculates interest on a month to  
14 month basis from August of 2008 through July of 2009. See Stephenson Decl., Exh A. The total  
15 accrued interest through April 15, 2010 is \$2,267.51. Although the Motion asserts a daily accruing  
16 interest rate of \$9.56, the only figure in the Declaration for daily interest rate is \$9.26. *Id.*  
17 Accordingly, the \$9.56 figure appears to be a typographical error. Therefore, interest continued to  
18 accrue on the full principle balance of \$34,315.97 at the rate of \$9.26 per day. From April 15, 2010  
19 through to the date of this order, 95 days have elapsed, resulting in additional interest of \$879.70.  
20 Accordingly, the total prejudgment interest amount is \$3,147.21.

21 Additionally, plaintiffs are entitled to attorneys' fees and costs. 29 U.S.C. § 1132(g)(2).  
22 Plaintiffs' attorneys spent 22.8 hours on this matter, resulting in \$6,995.50 in fees. See  
23 Supplemental Gordon Decl., Exh. B. The firm also expended \$531.62 in out-of-pocket costs.  
24 Plaintiff has adequately demonstrated that the time spent on this matter and the fees claimed are  
25 reasonable. Therefore, the total attorneys' fees and costs to be awarded is \$7,527.12.

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27 <sup>1</sup> At the hearing, the Court questioned whether venue was proper in this district. Plaintiffs  
28 submitted a post-hearing declaration adequately establishing that the plaintiff trust funds are  
administered in the district, making venue proper under 29 U.S.C. 1132(e)(2).

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V. CONCLUSION

The motion is granted. Default judgment will be entered in the principal amount of \$34,315.97 with prejudgment interest of \$3,147.21, and attorney fees and costs of \$7,527.12, for a total of \$44,990.30.

IT IS SO ORDERED.

Dated: 07/19/2010

  
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RICHARD SEEBORG  
UNITED STATES DISTRICT JUDGE