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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

BOARD OF TRUSTEES OF THE
GLAZIERS, ARCHITECTURAL
METAL AND GLASS WORKERS
LOCAL UNION # 1399 HEALTH AND
WELFARE TRUST,

Plaintiff,

vs.

TOM McMANUS,

Defendant.

CASE NO. 09cv843 WQH (BLM)

ORDER

HAYES, Judge:

The matter before the Court is Plaintiff's Motion for Attorney's Fees. (Doc. # 14).

BACKGROUND

Plaintiff initiated this action by filing the complaint on April 22, 2009. (Doc. # 1). On February 18, 2010, the Court granted Plaintiff's unopposed Motion for Summary Judgment. (Doc. # 13). The Court found that Plaintiff had established that Defendant had failed to pay contributions and dues to Plaintiff in violation of a labor agreement between the parties, a settlement agreement between the parties, the Employee Retirement Income Security Act ("ERISA"), and the Labor Management Relations Act ("LMRA"). *Id.* at 3, 7. The Court found that Plaintiff, the collections agent for employer contributions and dues for three trust funds associated with the Glaziers Architectural Metal and Glass Workers & Resilient Floor and Decorative Covering Workers Union # 1399 of San Diego and Imperial Counties, was

1 entitled to \$15,707.06 in damages for unpaid contributions and dues, liquidated damages, and
2 interest. *Id.* at 6-7. The Court concluded that Plaintiff was also entitled to recover “reasonable
3 attorney’s fees and costs” pursuant to 29 U.S.C. § 1332(g)(2). *Id.* at 8. However, the Court
4 held that Plaintiff had failed to carry its burden of establishing that the amount of attorney’s
5 fees to which it was entitled. *Id.* The Court therefore denied the motion for attorney’s fees and
6 costs without prejudice and with leave to refile. *Id.* The Court ordered Plaintiff to “submit any
7 request for attorney’s fees and costs with documentation within sixty (60) days of the date of
8 this order.” *Id.* On April 19, 2010, Plaintiff filed its Motion for Attorney’s Fees. (Doc. # 14).
9 Defendant did not file an opposition.

10 ANALYSIS

11 Plaintiff contends that it is entitled to \$16,560.00 in attorney’s fees. (Doc. # 14-1 at 2).
12 In support of the motion, Plaintiff submitted the declaration of Melissa W. Cook, the named
13 partner in the law firm representing Plaintiff. (Doc. # 14-2). Cook states she has practiced law
14 in California for over 25 years and has had numerous ERISA cases. *Id.* at 1. Cook states that
15 the billing rate of associates in her firm is \$225.00 per hour and that her associates spent 73.6
16 hours in total on this case, billing a total of \$16,560.00. *Id.* at 2. Cook states that her firm
17 “prepared the Complaint, attended an Early Neutral Evaluation Conference, prepared initial
18 disclosures on behalf of Plaintiff, attended a scheduling conference, researched and drafted a
19 successful summary judgment motion, and prepared this motion for attorney’s fees.” *Id.* Cook
20 states that in her opinion this is a reasonable fee based on the twelve factors identified by the
21 Ninth Circuit to evaluate awards of attorney’s fees. *Id.* at 2-3. Plaintiff also submitted the
22 billing records of two associates who worked on the case detailing how each attorney spent her
23 time working on the case. *Id.* at 4-12.

24 Pursuant to ERISA, in an action “by a fiduciary for or on behalf of a plan” for failure
25 to contribute to a multi-employer benefit plan pursuant to 29 U.S.C. § 1145, if the plaintiff
26 obtains judgment in its favor, “the court shall award the plan . . . reasonable attorney’s fees and
27 costs of the action to be paid by the defendant . . .” 29 U.S.C. § 1132(g)(2); *see also Hardt*
28 *v. Reliance Std. Life Ins. Co.*, 560 U.S. ___, No. 09-448 (May 24, 2010). Awarding fees to a

1 successful plaintiff in an action pursuant to 29 U.S.C. § 1145 is mandatory pursuant to 29
2 U.S.C. § 1132(g)(2). *Northwest Adm'rs, Inc. v. Albertson's, Inc.*, 104 F.3d 253, (9th Cir.
3 1996).

4 The twelve-factor test set forth in *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70
5 (9th Cir. 1975), is the appropriate test for determining whether attorney's fees requested
6 pursuant to 29 U.S.C. § 1132(g)(2) are reasonable. *See Trs. of the Constr. Indus. and*
7 *Laborer's Health and Welfare Trust v. Summit Landscape Cos.*, 460 F.3d 1253, 1255 (9th Cir.
8 2006). The twelve factors are:


9 (1) the time and labor required, (2) the novelty and difficulty of the questions
10 involved, (3) the skill requisite to perform the legal service properly, (4) the
11 preclusion of other employment by the attorney due to acceptance of the case,
12 (5) the customary fee, (6) whether the fee is fixed or contingent, (7) time
13 limitations imposed by the client or the circumstances, (8) the amount involved
and the results obtained, (9) the experience, reputation, and ability of the
attorneys, (10) the "undesirability" of the case, (11) the nature and length of the
professional relationship with the client, and (12) awards in similar cases.

14 *Kerr*, 526 F.2d at 70 "[A] district court should provide a concise but clear explanation of its
15 reasons for the fee award." *Trs. of the Constr. Indus.*, 460 F.3d at 1257 (citation omitted).

16 The Court finds that the detailed documentation submitted by Plaintiff's attorneys
17 establishes that 73.6 hours was a reasonable amount of time to spend on the case. *See Doc.*
18 *# 14-2 at 4-12.* The Court finds that the legal issues involved in the case are neither novel nor
19 difficult for a law firm with experience in ERISA cases, an area of law in which Plaintiff's law
20 firm has handled "numerous cases." *See Doc. # 14-2 at 1.* The Court finds that the hourly rate
21 of \$225.00 per hour is reasonable for representation in an ERISA case in the Southern District
22 of California. In light of these factors, the Court concludes that Plaintiff is entitled to \$16,560
23 in attorney's fees pursuant to 29 U.S.C. § 1132(g)(2).

24 IT IS HEREBY ORDERED that Plaintiff's Motion for Attorney's Fees in the amount
25 of \$16,560 is granted. (Doc. # 14) .

26 DATED: May 28, 2010

27 
28 **WILLIAM Q. HAYES**
United States District Judge