

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

PATRICK KELLETT, et al.,)
vs.)
Plaintiffs,)
vs.)
MARSHALL CONTRACTING, LLC,)
Defendant.)
Case No. 4:12CV00536 AGF

MEMORANDUM AND ORDER

This matter is before the Court on Plaintiffs' motion for an order compelling Defendant Marshall Contracting, LLC, to account to Plaintiffs, by means of an audit, for all amounts owing to Plaintiffs as a result of delinquent payments to employee benefit funds under the Employee Retirement Income Security Act, 29 U.S.C. § 1001, *et seq.* ("ERISA"). On August 22, 2012, the Clerk of Court entered default against Defendant. Plaintiffs now seek the audit so that they can determine the amount of Defendant's liability. Defendant has not responded to the motion.

Requiring an audit is an appropriate form of relief in an ERISA case for delinquent benefits where the amount of the delinquency is not known. *Int'l Painters & Allied Trades Indus. Pension Fund v. R.W. Amrine Drywall Co., Inc.*, 239 F. Supp.2d 26, 33 (D.D.C. 2002) (stating that an audit “promote[s] the legislative intent of ERISA”); *Am. Piles, Inc.*, 2002 WL 31626972 (S.D.N.Y. Nov. 21, 2002) (specifying documents to be produced for an audit).

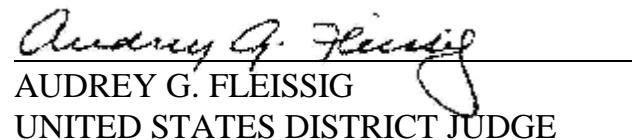
Accordingly,

IT IS HEREBY ORDERED that Plaintiffs' motion for an Order compelling an accounting is **GRANTED**. (Doc. No. 8.)

IT IS FURTHER ORDERED that Defendant shall submit its books to an audit by an auditor of Plaintiffs' choice, within 28 days of the date of this Memorandum and Order, at Defendant's cost. **Failure to comply with this Order may result in a finding of civil contempt and the imposition of sanctions including a fine and/or incarceration.**

IT IS FURTHER ORDERED that Plaintiffs shall effect service of this Memorandum and Order on Defendant by whatever means they believe to be most effective, and shall promptly file a certificate of such service.

IT IS FURTHER ORDERED that Plaintiffs shall have 14 days after completion of the audit to file a properly supported motion for default judgment. If said motion is not filed prior to November 1, 2012, Plaintiff shall file a status report with the Court by that date.


AUDREY G. FLEISSIG
UNITED STATES DISTRICT JUDGE

Dated this 12th day of September, 2012.