

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

PAINTERS DISTRICT COUNCIL NO. 58,	)	
et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 4:16 CV 513 CDP
	)	
DIVERSIFIED PAINTING SERVICES, LLC,	)	
	)	
Defendant.	)	

**MEMORANDUM AND ORDER ON PLAINTIFFS’  
MOTION FOR ENTRY OF DEFAULT JUDGMENT – ACCOUNTING**

This matter is before the Court on Plaintiffs’ motion for default judgment against **Diversified Painting Services, LLC** (hereinafter, “Defendant”). Plaintiffs filed this action on **April 13, 2016** under the Employee Retirement Security Act, 29 U.S.C. §§ 1132 and 1145, and the Labor Management Relations Act, 29 U.S.C. § 185. The Complaint alleges the Defendant to have failed to make accounting and fully pay several employee benefit funds and contributions due under the collective bargaining agreement between the Defendant and its employees’ union. Plaintiffs are the union and the trustees, sponsors and/or fiduciaries of the various funds.

The Clerk of Court entered an order of default against the Defendant on **October 25, 2016**. [Doc. #12].

Plaintiffs have filed a motion seeking an accounting under the parties’ trust

documents, collective bargaining agreement and common law under ERISA.

When the Clerk of Court has entered default against a defendant, the “allegations of the complaint except as to the amount of damages are taken as true.” *Mueller v. Jones*, No. 2:08CV16 JCH, 2009 WL 500837, at \*1 n.2 (E.D. Mo. Feb. 27, 2009) (quoting *Brown v. Kenron Aluminum & Glass Corp.*, 477 F.2d 526, 531 (8th Cir. 1973)). Accordingly, in deciding the present motion for default judgment, the Court accepts as true the factual allegations contained in the Plaintiffs’ Complaint together with those affidavits presented in the Plaintiffs’ motion and memorandum in support as they relate to the Plaintiffs’ damages and prayer for relief.

Based on those allegations and affidavits, Plaintiffs are entitled to the relief requested.


Accordingly,

**IT IS HEREBY ORDERED** that Plaintiffs’ motion for default judgment against the Defendant is **GRANTED**. Plaintiffs are awarded delinquent fringe benefit contributions, dues and deductions, liquidated damages and attorney’s fees and costs against the Defendant in the amount of **\$78,645.65** in delinquent fringe benefit contributions, dues and deductions and liquidated damages thereon for a period of the weeks ending **April 5, 2016** through week ending **August 2, 2016** (related to employee hours), and weeks ending **April 12, 2016** through **April 26,**

**2016** and again for weeks ending **June 21, 2016** through **August 2, 2016** (related to owner operator hours). [Sucharski Affidavit, ¶ 10]. (Doc. 17).

Plaintiffs are further granted their requested accounting of Defendant's records for the period of **November 9, 2015** to **November 8, 2016**. Defendant shall submit to the requested financial examination within thirty (30) days of this Court's Order.

The Plaintiffs shall enjoy the right to immediately execute upon this judgment.

  
\_\_\_\_\_  
CATHERINE D. PERRY  
UNITED STATES DISTRICT JUDGE

Dated this 4th day of April, 2017.