

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

LOCAL UNION 513 HEALTH AND )  
WELFARE FUND, et al, )  
 )  
Plaintiffs, )  
v. )  
PETRY EXCAVATING, LLC, )  
 )  
Defendant. )

Case Number: 4:18-cv-01279 SNLJ

**MEMORANDUM AND ORDER**

This matter is before the Court on Plaintiffs’ motion for default judgment (ECF. No. 16) against Petry Excavating, L.L.C. Plaintiffs are the union and trustees of various employee benefit plans. Plaintiffs filed this action to recover delinquent contributions owed to them under the Employee Retirement Income Security Act, [29 U.S.C. §§ 185 & 1132](#).

Clerk’s Entry of Default was entered against Defendant November 28, 2018. In their motion for default judgment, Plaintiffs seek judgment against Defendant in the amounts of \$45,693.81 in delinquent contributions, \$9,138.77 in liquidated damages and pre-judgment interest, \$544.70 in underpaid variances, \$5,677.76 in attorneys’ fees, and \$1,188.19 in costs. Further, Plaintiffs seek the imposition of compliance fines in the amount of \$12,600.00 associated with Defendant’s unexcused tardiness in complying with this Court’s December 19, 2018 Order compelling an accounting. ([ECF No. 8 & 14](#)). Plaintiffs have provided affidavits and exhibits supporting these amounts.

“Where default has been entered, the allegations of the complaint, except as to the amount of damages are taken as true.” *Carpenters’ Dist. Council of Greater St. Louis and Vicinity v. Hard Rock Foundations, LLC*, No. 4:13CV01549 AGF, [2013 WL 6037097](#), at \*2 (E.D.

Mo. Nov. 14, 2013) (citation omitted). “In determining the amount of damages for a default judgment in an ERISA case brought by a plan against an employer, the court may rely on detailed affidavits or documentary evidence to determine the appropriate sum for the default judgment.” *Painters Dist. Council 2 v. Grau Contracting, Inc.*, No. 4:10CV02339 AGF, [2012 WL 2848708](#), at \*1 (E.D. Mo. July 11, 2012) (internal quotation omitted). A plaintiff is entitled to recover all principal contributions owed pursuant to the payroll examination, plus liquidated damages totaling twenty percent of the delinquency, interest, attorneys’ fees, and costs. See [29 U.S.C. § 1132\(g\)\(2\)\(E\)](#). Damages must be proven by a preponderance of the evidence. See *Iron Workers St. Louis Dist. v. Arrow Fence, Inc.*, No. 4:11CV02019 AGF, [2013 WL 991658](#), at \*2 (E.D. Mo. Mar. 13, 2013).

Upon review of the record,

**IT IS HEREBY ORDERED** that Plaintiffs’ motion for default judgment is **GRANTED**. ([ECF No. 16](#)).

An appropriate Judgment showing Defendant’s full liability of \$62,243.23 to Plaintiffs shall accompany this Memorandum and Order.



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STEPHEN N. LIMBAUGH, JR.  
UNITED STATES DISTRICT JUDGE

Dated this 20th day of November 2020.