

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

CONSTRUCTION INDUSTRY)	
LABORERS PENSION FUND, et al.,)	
)	
Plaintiffs,)	
)	
v.)	No. 4:20-CV-01355-JAR
)	
ZOIE, LLC,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

This closed matter is before the court on Plaintiffs’ Motion for Contempt. ECF No. 33. For the reasons discussed below, the motion will be granted.

BACKGROUND

The Plaintiff benefit funds filed this action against Defendant Zoie, LLC in September 2020 seeking unpaid fringe benefit contributions, liquidated damages, and interest under the Employee Retirement Income Security Act. Defendant defaulted, and the Court entered a default judgment awarding Plaintiffs a total of approximately \$43,000, including attorney fees and audit costs. ECF No. 12. Plaintiffs were unable to collect the judgment and, in April 2023, served a subpoena on Defendant’s majority principal, Dana Howard, to produce documents and appear for a post-judgment deposition. After Mr. Howard failed to appear, Plaintiffs filed a motion to compel, which this Court granted. ECF Nos. 28, 31. The Court’s order to compel, which Plaintiffs personally served on Mr. Howard, stated that failure to comply could result in a finding of contempt. ECF Nos. 31, 32. Mr. Howard failed to comply.

On August 28, 2023, Plaintiffs filed the instant Motion for Contempt requesting that the Court enter an order imposing a monetary fine of \$200 per day on Defendant and Mr. Howard for

their failure to comply with the Court's Order to Compel and requiring Defendant and Mr. Howard to pay Plaintiffs' attorneys' fees incurred in bringing the Motion for Contempt. This Court promptly ordered Defendant and Mr. Howard to show cause why they should not be held in contempt of court, but they failed to respond within the time allotted. ECF No. 35. Plaintiffs personally served this Court's Show Cause Order on Dana Howard. ECF No. 36.

ANALYSIS

Courts have authority to award sanctions for contempt in ERISA collection cases where the defendant and/or its representatives have failed to participate in discovery for purposes of determining the amount of liability for unpaid contributions. *Iron Workers St. Louis Dist. Council Annuity Trust v. Miller Bldg. Grp.*, No. 4:14-CV-1298 JAR, 2015 WL 1442801, at *1 (E.D. Mo. Mar. 27, 2015). Appropriate sanctions include monetary fines until the contempt is purged. *Fischer v. Marubeni Cotton Corp.*, 526 F.2d 1338, 1340 (8th Cir 1975). Pursuant to Fed. R. Civ. P. 37(b) and 45(e), the issuance of an order of contempt may also include sanctions such as attorneys' fees and costs. *See, e.g., Greater St. Louis Const. Laborers Welfare Fund v. Marshall Contracting*, No. 4:12-CV-524 JAR, 2012 WL 4759772 (E.D. Mo. Oct. 5, 2012) (awarding attorneys' fees). "The party moving for contempt sanctions bears the burden of proving facts warranting a civil contempt order by clear and convincing evidence." *Chicago Truck Drivers v. Brotherhood Labor Leasing*, 207 F.3d 500, 504 (8th Cir. 2000) (quoting *Indep. Fed'n of Flight Attendants v. Cooper*, 134 F.3d 917, 920 (8th Cir. 1998)).

The Court has provided Defendant and Mr. Howard numerous opportunities to comply with the Court's orders and they have failed to do so. The Court's order to compel and show cause order were personally served on Mr. Howard, and Defendant and Mr. Howard remain non-compliant. Plaintiffs' attorney has stated by sworn affidavit that Defendant and Mr. Howard have

not complied with this Court's orders or responded to Plaintiffs' subpoena. Plaintiffs have met their burden of proving facts warranting a civil contempt order by clear and convincing evidence.

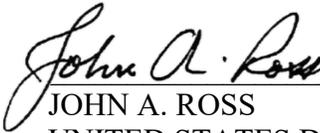
Accordingly,

IT IS HEREBY ORDERED that Plaintiffs' Motion for Contempt (ECF No. 33) is **GRANTED** and Defendant Zoie, LLC and Dana Howard are found in **CONTEMPT** of this Court. As sanctioned, Defendant and Mr. Howard are collectively fined \$200.00 per day for each day after this date that Defendant fails to submit records for inspection or otherwise comply with this Court's Orders. The penalty is imposed as a joint and several obligation of the Defendant and Mr. Howard.

IT IS FURTHER ORDERED that Plaintiffs' request for an award of attorneys' fees and costs in bringing this Motion for Contempt is **GRANTED**. Counsel for Plaintiffs shall file an affidavit of fees and costs for the Court's consideration no later than **December 14, 2023**.

IT IS FINALLY ORDERED that Plaintiffs shall obtain service of this Memorandum and Order on Defendants by whatever means they believe to be most effective and shall promptly file a certificate of such service. Failure to show adequate evidence of prompt service may result in the continuation or cancellation of the compliance fine ordered herein.

Dated this 13th day of November, 2023.



JOHN A. ROSS
UNITED STATES DISTRICT JUDGE