

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

**IBEW LOCAL 102 DISTRIBUTION  
FUNDS, et al.,**

*Plaintiffs,*

v.

**OHMS ELECTRICAL CONTRACTORS,  
INC.,**

*Defendant.*

**Civil Action No. 16-0388**

**ORDER**

**ARLEO, UNITED STATES DISTRICT JUDGE**

**THIS MATTER** comes before the Court on Plaintiffs IBEW Local 102 Welfare, Pension, Annuity and Joint Apprenticeship Training Funds and their Board of Trustees (the “Trusts”), IBEW Local Union No. 102 (the “Union”), and the IBEW Local 102 Distribution Fund’s (the “Distribution Fund”) (together, “Plaintiffs”) motion for default judgment against Defendant OHMS Electrical Contractors, Inc. (“Defendant”)<sup>1</sup> pursuant to Federal Rule of Civil Procedure 55(b). ECF No. 14. For the reasons set forth herein, the motion is **DENIED**.

1. This ERISA matter arises from Defendant’s alleged failure to remit payments to Plaintiffs in accordance with the terms of the collective bargaining agreement between Defendant and Plaintiff IBEW Local Union No. 102.

2. In their Amended Complaint, Plaintiffs assert ERISA violations and breach of contract for breach of the collective bargaining agreement and of the terms of a surety bond against

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<sup>1</sup> IBEW does not seek default judgment against Defendant Companion Property & Casualty Company as it has been voluntarily dismissed from this matter. See Order of Voluntary Dismissal dated August 30, 2016, ECF No. 11.

Defendant. Am. Compl. ¶ 15, 31, ECF No. 6. Plaintiffs seek damages for the principal amount, liquidated damages, interest, and attorneys' fees. Id.

3. With respect to damages, this Court "does not accept as true allegations pertaining to the amount of damages, and may employ various methods to ascertain the amount of damages due." Mapssy Intern., Inc. v. Hudson Valley Trading Inc., No. 08-3037, 2012 WL 4889229, at \*6 (D.N.J. Oct. 11, 2012) (denying award of damages where plaintiff did not submit documentation to support the requested damages from a breach of contract) (citing Transatlantic Marine Claims Agency, Inc. v. Ace Shipping Corp., 109 F.3d 105, 111 (2d Cir. 1997)).

4. In their Amended Complaint, Plaintiffs sought damages resulting from the breach of contract equal to a principal balance of \$34,683.47, plus interest and attorneys' fees and costs. Am. Compl. ¶ 15, 31. In the instant application, Plaintiffs explained that they had recovered \$19,000 through a surety bond against OHMS, thereby reducing the principal amount sought to \$15,683.47. See Timothy Hott Certification of Proof of Service ("Hott Cert. re Service"), ECF No. 14-1. They also seek liquidated damages of twenty percent of the original unpaid principal of \$34,683.47. Id. However, Plaintiffs have not submitted documentation, such as a copy of the collective bargaining agreement, to support the original principal balance. Nor have they provided any documentation indicating that the contract provided for liquidated damages of twenty percent.

5. Accordingly, Plaintiffs' motion for default judgment cannot be granted at this time.

**ORDERED** that Plaintiffs IBEW Trusts, Union, and Funds motion for default judgment against Defendant OHMS Electrical Contractors, Inc., ECF No. 14, is **DENIED**; and it is further

**ORDERED** that Plaintiffs may submitted a renewed motion for default judgment by September 22, 2017.

**Dated: August 22, 2017**

*/s Madeline Cox Arleo*  
**MADELINE COX ARLEO**  
**United States District Judge**