

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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THE ANNUITY, PENSION, WELFARE and
TRAINING FUNDS of the INT'L UNION of
OPERATING ENGINEERS, LOCAL 14-14B,
AFL-CIO by its TRUSTEES,

Plaintiffs,

-against-

ORDER
CV-10-3051 (ARR)

SARAMAC INTERNATIONAL, INC.,

Defendant.

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GOLD, S., *United States Magistrate Judge*:

By Order dated September 29, 2010, the Honorable Allyne R. Ross referred plaintiffs' motion for default judgment to me for a report and recommendation on what relief should be awarded to the Funds. The court will consider all previous submissions in determining an appropriate award, but has two questions concerning plaintiffs' submission.

First, plaintiffs should clarify whether all fringe benefit contributions sought are due and owing to ERISA funds. In their complaint, the Funds specifically note that the Annuity, Pension, Welfare and Training Funds are employee benefit plans within the meaning of ERISA. Compl. ¶¶ 6, 7. In their damages submission, however, the Funds also seek contributions for union assessments and a defense fund. *See* Steinberg Aff. Ex. E. Accordingly, plaintiffs shall either provide a statement that these additional contributions are also subject to ERISA or explain the basis for seeking to recover these amounts. I note in this regard that, although a court may award damages to a non-ERISA fund on a breach of contract theory, the plaintiffs' only causes of action alleged in the complaint appear to be brought pursuant to ERISA. *See* Fed. R. Civ. P. 54(c) (limiting recovery on a default judgment to the relief sought in the complaint and providing

that “[a] default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings”); *see also* Compl. ¶¶ 22, 25 (citing ERISA).

Second, plaintiffs seek \$165 for service of process, but the fee for service upon the Secretary of State is \$40. *See* Docket Entry 3. Accordingly, the court intends to recommend an award of \$40 for service unless plaintiffs provide additional support for a greater award.

The court recognizes that the monetary award sought here is not significant, and that plaintiffs may prefer not to incur additional attorney’s fees simply to obtain a slight increase in damages awarded. Accordingly, I advise plaintiffs that I have reviewed their submissions and find them otherwise adequate to support an award of damages. Based on plaintiffs’ submissions thus far, the court would be prepared to recommend an award in the total amount of \$19,620.91, comprised of \$12,328.80 in unpaid contributions due and owing to the four ERISA funds named in the complaint, \$2,049.35 in interest through May 27, 2010, \$2,465.76 in liquidated damages, and \$2,777.00 in fees and costs.¹

Plaintiffs shall submit either additional documentation in support of their motion or a letter indicating that they will rest on the submissions already made. Plaintiffs’ further submission in support of damages or their letter is due no later than October 22, 2010. Any submission that defendant wishes to make in response is due no later than November 5, 2010. Any reply that plaintiffs wish to make should be filed no later than November 12, 2010. In addition, if the defendant pays any of the outstanding monies, plaintiffs shall immediately notify the court and provide an updated affidavit detailing the amounts that remain due and owing.

¹ The \$12,328.80 in unpaid contributions excludes the contributions for the union assessments and defense fund. The liquidated damages was calculated by taking 20% of the principal amount due pursuant to 29 U.S.C. § 1132(g)(2)(C)(i) and (ii), and interest through May 27, 2010 was recalculated based on the new principal amount. Plaintiffs will also be entitled to interest on the \$12,328.80 in unpaid contributions at the rate of 6% per annum, beginning from May 28, 2010 through the date of judgment, to be calculated by the Clerk of the Court at the time of judgment.

Upon receipt of this Order, plaintiffs are hereby directed promptly to serve a copy of this Order by certified mail, return receipt requested, on defendant at its last known address, and to provide the Court with a copy of the return receipt.

SO ORDERED.

Dated: Brooklyn, New York
October 4, 2010

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STEVEN M. GOLD
United States Magistrate Judge

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