

attorney fees, and other collection costs. (Id. at 11-12¹.)

Personal service was perfected upon defendant (Doc. No. 6), however, defendant did not answer or otherwise respond to the complaint. Plaintiff applied to the Clerk for entry of default against defendant (Doc. No. 7), and the Clerk entered default against defendant on August 21, 2017 (Doc. No. 8).

B. LAW AND ANALYSIS

Federal Rule of Civil Procedure 55(b) governs the entry of default judgment. Rule 55(b) provides that default judgment may be entered against a defendant who is neither a minor nor an incompetent person. According to the complaint, defendant is a foreign corporation that has conducted business in Ohio. As a business entity, defendant is not a minor, incompetent person, or subject to the Soldiers and Sailors Relief Act of 1940. *Zinganything, LLC v. Tmart UK Ltd.*, No. 5:14-CV-629, 2016 WL 362359, at *2 (N.D. Ohio Jan. 29, 2016) (citation omitted).

Rule 55(b)(1) provides that judgment may be entered by the Clerk if the amount is for a sum certain “on the plaintiff’s request, with an affidavit showing the amount due[.]” Plaintiff did submit an affidavit in support of its request for default judgment, but the affidavit did not address the total amount due in support of the motion. In fact, plaintiff represented that it will not know the full amount until it has an opportunity to audit defendant’s books and records. (Mot. at 149, citing Doc. No. 9-1 (Affidavit of Tim Meyers [“Meyers Aff.”]) ¶ 7.)

¹ All page number references are to the page identification number generated by the Court’s electronic docketing system.

The Court may enter default judgment pursuant to Rule 55(b)(2). That rule does not set forth a standard to be applied in determining when a party is entitled to a judgment by default. “When an application is made to the court under Rule 55(b)(2) for the entry of a judgment by default, the district judge is required to exercise sound judicial discretion in determining whether the judgment should be entered.” 10A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure: Civ.3d* § 2685 (1998) (footnotes omitted). “This element of discretion makes it clear that the party making the request is not entitled to a default judgment as of right [...] .” *Id.*

1. Default judgment as to liability

Once default is entered, the defaulting party is deemed to have admitted all of the well-pleaded factual allegations in the complaint regarding liability, including jurisdictional averments. *Ford Motor Co. v. Cross*, 441 F. Supp. 2d 837, 846 (E.D. Mich. 2006) (citing *Visioneering Constr. v. U.S Fid. & Guar.*, 661 F.2d 119, 124 (6th Cir. 1981)); see also Fed. R. Civ. P. 8(b)(6) (“An allegation—other than one relating to the amount of damages—is admitted if a responsive pleading is required and the allegation is not denied.”).

Plaintiff filed its complaint under § 301 of the Labor Management Relations Act of 1947 (LMRA), codified at 29 U.S.C. § 185, and § 502(a)(3), (e), and (f) of the Employee Retirement Income Security Act of 1974 (ERISA), codified at 29 U.S.C. § 1132(a)(3), (e), and (f). According to the complaint, plaintiff collects and receives fringe benefit contributions from signatory employers to the CBAs, and those funds are administered by plaintiff. Defendant is a signatory to the CBAs, however, it did not pay the fringe benefit contributions for its employees as required by the CBAs. (See Compl. ¶¶ 16, 20, 24, 28, 30, 32, 34, 36, 38, 40.)

Defendant is deemed to have admitted the allegations in the complaint by virtue of its default, and those allegations are sufficient to establish plaintiff's claims for breach of contract. Accordingly, plaintiff is entitled to default judgment as to liability with respect to plaintiff's claims that defendant breached the CBAs because defendant did not make the required payments in accordance with those agreements.

2. Default judgment as to damages

Well-pleaded allegations in the complaint as to liability are taken as true when a defendant is in default, but not as to damages. *Ford Motor Co.*, 441 F. Supp. 2d at 846 (citing *Visioneering Constr.*, 661 F.2d at 124); *Nat'l Satellite Sports, Inc. v. Mosley Entm't Inc.*, No. 01-CV-74510-DT, 2002 WL 1303039, at *3 (E.D. Mich. May 21, 2002) (the allegations of the complaint regarding the amount of damages are not controlling) (citations omitted). “[T]he civil rules ‘require that the party moving for a default judgment must present some evidence of its damages.’” *IBEW Local Union 82 v. Union Lighting Prot.*, No. 3:11-CV-208, 2012 WL 554573, at *1 (S.D. Ohio Feb. 21, 2012) (quoting *Mill's Pride, L.P. v. W.D. Miller Enterpr.*, No. 2:07-cv-990, 2010 WL 987167, at *1 (S.D. Ohio Mar. 12, 2010)).

Rule 55(b)(2) permits, but does not require, the district court to conduct an evidentiary hearing to determine damages. *Arthur v. Robert James & Assoc. Asset Mgmt., Inc.*, No. 3:11-cv-460, 2012 WL 1122892, at *1 (S.D. Ohio Apr. 3, 2012) (citing *Vesligaj v. Peterson*, 331 F. App'x. 351, 354-55 (6th Cir. 2009)). The Court may rely on affidavits submitted by plaintiff in support of damages without the need for a hearing. *Id.* at *2 (citations omitted).

At this juncture, plaintiff does not seek default judgment with respect to a specific amount of damages, but an order requiring defendant to submit to an audit so that plaintiff may

determine the amount due and owing plaintiff in unpaid contributions under the CBAs. After conducting the audit, plaintiff states that it will make further submissions to the Court regarding the amount due. (See Mot. at 150.)

Plaintiff's motion is granted in this regard. Any such audit must be completed by February 9, 2018, and defendant is ordered to timely cooperate with plaintiff therewith. If, as a consequence of the audit, plaintiff determines the amount of damages that are owed, plaintiff may file a properly supported supplemental motion no later than February 28, 2018.

C. Conclusion

For all of the foregoing reasons, plaintiff's motion for default judgment (Doc. No. 9) as to liability is granted. Plaintiff's motion is granted on the issue of requiring defendant to submit to an audit as described herein, and defendant is hereby ordered to cooperate with such audit in a timely manner. Any such audit must be completed by February 9, 2018.

Plaintiff shall submit any evidentiary support of damages and attorney fees and costs by February 28, 2018. If such support is not submitted by February 28, 2018, the Court will schedule an evidentiary hearing.

IT IS SO ORDERED.

Dated: December 4, 2017



HONORABLE SARA LIOI
UNITED STATES DISTRICT JUDGE