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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

8 NORTHWEST SHEET METAL WORKERS
9 ORGANIZATIONAL TRUST, et al.,

10 Plaintiffs,

11 v.

12 4 SEASONS MECHANICAL,

13 Defendant.

Case No. C14-1920 BAT

**ORDER DENYING PLAINTIFFS'
MOTION FOR SUMMARY
JUDGMENT AND GRANTING
LEAVE TO FILE AN AMENDED
MOTION**

14 The Court, having considered Plaintiffs' unopposed Motion for Summary Judgment and
15 supporting documents (Dkt. 14) as well as the underlying record in this case, hereby **DENIES**
16 Plaintiffs' motion for the reasons stated below. Plaintiffs are given leave to file an amended
17 motion for summary judgment no later than **December 11, 2015**. The Court further finds that
18 Defendant, 4 Seasons Mechanical, appears to be without counsel and may therefore be subject to
19 default under LCR 83.2(b)(3).

20 **I. BACKGROUND**

21 This case concerns pension and trust funds governed by the Employee Retirement
22 Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 *et seq.* The underlying facts in this
23 case are undisputed. Plaintiffs are Sheet Metal Workers Local 66 ("Local 66"), a labor

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MOTION - 1

1 organization, and several employee benefit funds. Dkt. 1 at ¶¶ 2, 4, 6, 8, 10, 12, 14; Dkt. 5 at ¶¶
2 2, 4, 6, 8, 10, 12, 14. Defendant is a sheet metal contractor and has been a party to a collective
3 bargaining agreement with Plaintiff Local 66. Dkt. 1 at ¶ 15; Dkt. 5, ¶ 15. The collective
4 bargaining agreement required Defendant to make payments into pension funds and trust funds.
5 Dkt. 1 at ¶ 17; Dkt. 5 at ¶ 17. For the period of June 2014 through February 2015, Defendant
6 failed to fulfill these obligations. Dkt. 1 at ¶ 21; Dkt. 5 at ¶ 21. Defendant also received money
7 from Plaintiff Local 66's employees, and Defendant was obligated to deposit these funds
8 appropriately, but did not make these deposits. Dkt. 1 at ¶ 18; Dkt. 5 at ¶ 18. Plaintiffs thus filed
9 this case to collect employee benefit contributions, liquidated damages, pre-judgment interest,
10 costs, and attorneys' fees pursuant to 29 U.S.C. § 1132(g). On October 19, 2015, Plaintiffs filed
11 a motion for summary judgment. Dkt. 14. Plaintiffs seek a judgment for the sum of the
12 delinquent contributions, liquidated damages, pre-judgment interest, and attorneys' fees and
13 costs as well as an award of post-judgment interest in the amount .27% per annum until paid. *Id.*
14 Defendant did not oppose this motion, and based upon the record, appears to be without counsel.
15 *See* Dkt. 12–13.

16 II. LEGAL STANDARDS

17 A. Summary Judgment

18 Summary judgment is appropriate if, viewing the evidence and all reasonable inferences
19 drawn therefrom in the light most favorable to the nonmoving party, the moving party shows that
20 “there are no genuine issues of material fact and the moving party is entitled to judgment as a
21 matter of law.” Fed.R.Civ.P. 56(a); *Torres v. City of Madera*, 648 F.3d 1119, 1123 (9th Cir.
22 2011). A court cannot grant a summary judgment motion merely because the motion is
23 unopposed. *Henry v. Gill Indus., Inc.*, 983 F.2d 943, 949–50 (9th Cir.1993); *accord Martinez v.*

1 *Stanford*, 323 F.3d 1178, 1182 (9th Cir.2003).¹ Even without an opposition, the court must
2 apply standards consistent with Federal Rule of Civil Procedure 56, determining if the moving
3 party’s motion demonstrates that there is no genuine issue of material fact and judgment is
4 appropriate as a matter of law. *Henry*, 983 F.2d at 950.

5 **B. Evidentiary Issues**

6 In ruling on a motion for summary judgment, a trial court can only consider admissible
7 evidence. *See* Fed.R.Civ.P. 56(e); *Orr v. Bank of Am., NT & SA*, 285 F.3d 764, 773 (9th Cir.
8 2002). Admissibility of evidence is established through authentication, by “produc[ing]
9 evidence sufficient to support a finding that the item is what the proponent claims it is.”
10 Fed.R.Evid. 901(a). Unauthenticated documents cannot be considered in a motion for summary
11 judgment. *Orr*, 285 F.3d at 773.² For purposes of a summary judgment motion, “documents
12 authenticated through personal knowledge must be attached to an affidavit that meets the
13 requirements of Fed.R.Civ.P. 56(e), and the affiant must be a person through whom the exhibits
14 could be admitted into evidence.” *Orr*, 285 F.3d at 773–74 (internal quotations, citations, and
15 footnotes omitted).

16 In support of the motion, Plaintiffs submit the Declaration of Daniel Hutzenbiler, an
17 attorney for Plaintiffs, with Exhibits A–Q attached. According to Mr. Hutzenbiler’s declaration,
18 Exhibit A consists of “[a] true and correct copy of the collective bargaining agreement in effect
19 between Defendant 4 Seasons Mechanical and Local 66.” Dkt. 14, Decl. Hutzenbiler, at ¶ 12.

21 ¹ *See also* Fed.R.Civ.P. 56, 2010 cmt. to subdivision (e) (“[S]ummary judgment cannot be granted by default. . . .”);
LCR 7(b)(2) (failure to respond to a summary judgment motion is not to be treated as an admission that the motion
has merit).

22 ² *See also* *Cristobal v. Siegel*, 26 F.3d 1488, 1494 (9th Cir.1994); *Hal Roach Studios, Inc. v. Richard Feiner & Co.,*
Inc., 896 F.2d 1542, 1550–51 (9th Cir.1989); *Canada v. Blain's Helicopters, Inc.*, 831 F.2d 920, 925 (9th Cir.1987);
23 *Hamilton v. Keystone Tankship Corp.*, 539 F.2d 684, 686 (9th Cir.1976).

1 According to Mr. Hutzenbiler's declaration Exhibits B–G consist of excerpts of trust agreements
2 allegedly also binding on Defendant by operation of the collective bargaining agreement. *Id.* at
3 ¶¶ 13, 16. The Court finds that these documents are insufficient to support Plaintiffs' motion.
4 While Defendant's Answer admits that Defendant was party to a collective bargaining agreement
5 with Local 66 (Dkt. 5 at ¶¶ 15, 17), the copy of the collective bargaining agreement proffered by
6 Plaintiffs is undated, unsigned, and unaccompanied by any other materials demonstrating assent
7 by Defendant. Further, the collective bargaining agreement was submitted under the declaration
8 of Plaintiffs' attorney. The Court finds nothing in Mr. Hutzenbiler's declaration to demonstrate
9 his personal knowledge as to the authenticity of Exhibits A–G (collective bargaining agreement
10 and trust agreements), and these documents are thus inadmissible and not properly of record.
11 Accordingly, the Court may not consider these materials in ruling on Plaintiffs' motion.

12 **C. Plaintiffs' Entitlement to Contributions, Liquidated Damages, Pre-Judgment**
13 **Interest, Attorney Fees and Costs and Amounts Due**

14 There is no question that this case is governed by ERISA, and that ERISA obligates
15 participating employers to make contributions to a multi-employer trust fund in accordance with
16 the applicable contracts. 29 U.S.C. § 1145. ERISA provides specific remedies including unpaid
17 contributions, liquidated damages, interest, attorney's fees, and costs. 29 U.S.C. § 1132(g)(2).
18 Defendant never disputed that it was party to a collective bargaining agreement with Plaintiffs
19 and was delinquent in paying required contributions for the months of June 2014 through
20 February 2015. Dkt. 5 at ¶¶ 17–21. Plaintiffs filed this civil action, triggering 29 U.S.C. §
21 1132(g)(2). The Court thus finds no issues of fact regarding Plaintiffs' entitlement to delinquent
22 contributions, liquidated damages, pre-judgment interest, and attorneys' fees and costs. The
23 Court, however, cannot grant summary judgment on the sums due to Plaintiffs because the

1 collective bargaining agreement and trust agreements proffered to establish the basis for the
2 calculation of liquidated damages and pre-judgment interest are not properly of record. Further,
3 the Court finds that the calculations presented by Plaintiffs in the motion for summary judgment
4 are inconsistent, at times indicating that Plaintiffs are due liquidated damages of \$16,077.20
5 (Dkt. 14 Motion at 1; Proposed Order at 1) or \$29,903.23 (Dkt. 14 Motion at 2; Decl.
6 Hutzenbiler at ¶ 20). Likewise Plaintiffs' summary judgment materials state that Plaintiffs are
7 entitled to pre-judgment interest of \$4,643.68 (Dkt. 14 Motion at 1; Proposed Order at 1) or
8 \$15,567.23 (Dkt. 14 Motion at 2; Declaration of Hutzenbiler at ¶ 20). Although Plaintiffs are
9 entitled to attorneys fees, there are additional discrepancies in the materials regarding the amount
10 due. Dkt. 14 at 1–2.

11 With respect to the delinquent contributions, Plaintiffs' Complaint states that the dollar
12 amount due to Plaintiffs "cannot be ascertained without reviewing Defendant's employment
13 records for the period in question." Dkt. 1 at ¶ 22. Defendant admitted this assertion to be true.
14 Dkt. 5 at ¶ 22. Mr. Hutzenbiler's Declaration states that Defendant did not respond to discovery.
15 Dkt. 14, Decl. Hutzenbiler at ¶ 21. The materials submitted by Plaintiffs do not establish how
16 the total delinquent contributions were calculated and do not include any relevant employment
17 records. It is thus unclear how the total of \$154,222.10 was derived.

18 Plaintiffs argue in the alternative that they are entitled to contributions, liquidated
19 damages, attorneys' fees, and costs under Section 301 of the National Labor Relations Act for
20 collection of delinquent trust fund contributions and wages withheld. Because this theory also
21 necessarily relies upon the collective bargaining agreement and trust agreements which are not
22 properly of the record, the Court declines to address this argument at this time.

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1 **D. Defendant's Lack of Counsel**

2 On June 22, 2015, Defendant's former attorney, Antoni Froehling, filed a motion to
3 withdraw from this case certifying that he had advised Defendant of its obligation, as a business
4 entity, to be represented by counsel before this Court. Dkt. 12 at 3. On July 13, 2015, the Court
5 granted Mr. Froehling's motion to withdraw. Dkt. 13. To date, no other attorney has appeared
6 on behalf of Defendant. LCR 83.2(b)(3) requires business entities to be represented by counsel
7 in proceedings before this Court. Accordingly, Defendant may be subject to an entry of default,
8 however, a motion for judgment by default against Defendant must comply with the evidentiary
9 requirements of LCR 55(b).

10 **III. CONCLUSION**

11 For the reasons stated above, Plaintiffs' Motion for Summary Judgment (Dkt. 14) is
12 denied without prejudice. Plaintiffs are given leave to file an amended motion for summary
13 judgment no later than December 11, 2015.

14 DATED this 20th day of November, 2015.

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18 BRIAN A. TSUCHIDA
19 United States Magistrate Judge
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