

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF  
CALIFORNIA

Operating Engineers Health and Welfare Trust Fund, et al. v. Eagle  
Environmental & Construction, et al.

Operating Engineers Health and Welfare Trust Fund v. Eagle Environmental & Construction · No. 25-cv-02524-KAW · Decided October 16, 2025

SUMMARY

This report and recommendation addresses Plaintiffs’ motion for default judgment in an ERISA action against Eagle Environmental & Construction and Ronald Batiste. The court recommends ordering Defendants to comply with a payroll audit and provide contribution reports, awarding Plaintiffs \$2,856.50 in attorney’s fees and \$1,421.42 in costs, and retaining jurisdiction to amend the judgment if the audit identifies unpaid contributions.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                   |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States District Court for the Northern District of California                                                                                                                                                                                                                                                                                              |
| WRITING FOR THE COURT | Kandis A. Westmore                                                                                                                                                                                                                                                                                                                                                |
| JURISDICTION          | United States District Court for the Northern District of California                                                                                                                                                                                                                                                                                              |
| DECIDED               | October 16, 2025                                                                                                                                                                                                                                                                                                                                                  |
| DOCKET                | 25-cv-02524-KAW                                                                                                                                                                                                                                                                                                                                                   |
| DISPOSITION           | other                                                                                                                                                                                                                                                                                                                                                             |
| PROCEDURAL POSTURE    | Plaintiffs moved for default judgment after Defendants were personally served, failed to respond, and had default entered by the Clerk. The magistrate judge reassigned the action to a district judge because Defendants had not consented to magistrate judge jurisdiction and issued a report and recommendation on the motion.                                |
| STANDARD OF REVIEW    | Under Federal Rule of Civil Procedure 55(b)(2), the court applied the Eitel factors to determine whether default judgment was appropriate. The court also required Plaintiffs to establish damages through testimony or written affidavit, because default establishes liability only from well-pleaded allegations and does not establish the amount of damages. |
| PRECEDENTIAL VALUE    | nonprecedential                                                                                                                                                                                                                                                                                                                                                   |
|                       |                                                                                                                                                                                                                                                                                                                                                                   |

## PARTIES

Operating Engineers Health and Welfare Trust Fund, et al. v. Eagle Environmental & Construction, et al.

## TOPICS

default judgment

employee benefits

attorney fees

injunctions

civil procedure

## PRACTICE AREAS

ERISA

employee benefits

civil procedure

default judgment

attorney's fees

## QUESTIONS PRESENTED

1. Whether the court had subject matter jurisdiction, personal jurisdiction, and adequate service to consider default judgment.
2. Whether the Eitel factors supported entry of default judgment requiring Defendants to comply with the requested audit and provide contribution reports.
3. Whether Plaintiffs were entitled to attorney's fees and costs under ERISA despite not yet establishing that unpaid contributions existed.
4. Whether the court should retain jurisdiction to permit Plaintiffs to seek amendment of the judgment after the audit determines whether additional contributions are owed.

## HOLDINGS

1. The court determined that subject matter jurisdiction existed under ERISA and the LMRA, personal jurisdiction existed under ERISA's nationwide service provision because the plans were administered in the district, venue was proper, and Defendants had been properly served.
2. The Eitel factors favored entry of default judgment and supported an order requiring Defendants to comply with Plaintiffs' audit request and provide contribution reports.
3. Plaintiffs were entitled to discretionary attorney's fees under ERISA § 502(g)(1), but not mandatory fees under § 502(g)(2), because Plaintiffs had not yet demonstrated that unpaid contributions existed. After deducting noncompensable clerical time, the recommended fee award was \$2,856.50, plus \$1,421.42 in costs.

## KEY QUOTATIONS

*"Before assessing the merits of a default judgment, a court must confirm that it has subject matter jurisdiction over the case and personal jurisdiction over the parties, as well as ensure the adequacy of service on the defendant."* (at 2)

*"After an examination of these facts in the aggregate, this Court finds that Eitel factors one through six outweigh the Federal Rules of Civil Procedure's preference for a decision on the merits."* (at 8)

*"Here, however, Plaintiffs have not demonstrated that there are unpaid contributions; indeed, the very purpose of the audit is to determine whether there are unpaid contributions."* (at 9)

*“Finally, the district court should retain jurisdiction to allow Plaintiffs to submit a further motion to amend the judgment should the audit reveal unpaid contributions.” (at 12)*

## FACTUAL BACKGROUND

Eagle Environmental & Construction entered into an independent agreement incorporating collective-bargaining and trust-agreement obligations to make fringe-benefit contributions and submit to audits. The agreements required timely contributions, interest, liquidated damages, and reimbursement of collection expenses, and allegedly made principal shareholder Ronald Batiste personally liable for specified obligations. Plaintiffs requested payroll and contribution records for an audit covering January 1, 2017 through December 31, 2021, and sought contribution reports for May 2016 through January 2025, but Defendants failed to respond. Defendants were served, failed to appear, and remained in default.

## PROCEDURAL HISTORY

Plaintiffs filed an ERISA action seeking an audit, contribution reports, payment of unpaid contributions, and related relief. Defendants were personally served on April 10, 2025, failed to answer, and default was entered on May 6, 2025. Plaintiffs moved for default judgment on August 5, 2025; Defendants did not appear or oppose the motion. After a September 18, 2025 hearing, the magistrate judge recommended granting the motion in part and denying it in part, subject to review by a district judge.

## DISPOSITION

other

## CASES CITED

- Shanghai Automation Instrument Co. v. Kuei, 194 F. Supp. 2d 995, 1005 (N.D. Cal. 2001)
- Draper v. Coombs, 792 F.2d 915, 924-25 (9th Cir. 1986)
- In re Tuli, 172 F.3d 707, 712 (9th Cir. 1999)
- Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986)
- Pepsico, Inc. v. Cal. Sec. Cans, 238 F. Supp. 2d 1172, 1175 (C.D. Cal. 2002)
- Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917-18 (9th Cir. 1987)
- Cripps v. Life Ins. Co. of N. Am., 980 F.2d 1261, 1267 (9th Cir. 1992)
- Action Embroidery Corp. v. Atl. Embroidery, Inc., 368 F.3d 1174, 1180 (9th Cir. 2004)
- Health & Welfare Trust Fund v. RT/DT, Inc., C 12-05111 JSW, 2013 WL 2237871, at \*4 (N.D. Cal. May 21, 2013)
- Cent. States, Se. v. Sw. Areas Pension Fund v. Cent. Transp. Inc., 472 U.S. 559, 582 (1985)
- Operating Eng'rs' Health & Welfare Trust Fund v. Cal Excavation & Underground, Inc., 2020 U.S. Dist. LEXIS 32149, at \*18 (N.D. Cal. Jan. 28, 2020)
- Bd. of Trs. of the Laborers Health & Welfare Trust Fund for N. Cal. v. Atoll Topui Island, Inc., 2007 U.S. Dist. LEXIS 4307, at \*2 (N.D. Cal. Jan. 22, 2007)
- Bd. of Trs. of Cal. Metal Trades v. Pitchometer Propeller, 1997 WL 797922, at \*2 (N.D. Cal. Dec. 15, 1997)

- *Truong Giang Corp. v. Twinstar Tea Corp.*, 2007 WL 1545173, at \*12 (N.D. Cal. May 29, 2007)
- *Phillip Morris USA, Inc. v. Castworld Prod., Inc.*, 219 F.R.D. 494, 500 (C.D. Cal. 2003)
- *Fair Hous. of Marin v. Combs*, 285 F.3d 899, 906 (9th Cir. 2002)
- *Bd. of Trs. of the Boilermaker Vacation Trust v. Skelly, Inc.*, 389 F. Supp. 2d 1222, 1226 (N.D. Cal. 2005)
- *Hummell v. S. E. Rykoff & Co.*, 634 F.2d 446, 453 (9th Cir. 1980)
- *Bell v. Clackamas Cnty.*, 341 F.3d 858, 860 (9th Cir. 2003)
- *Nadarajah v. Holder*, 569 F.3d 906, 921 (9th Cir. 2009)
- *IBEW Local 595 Trust Funds v. ACS Controls Corp.*, No. C-10-5568, 2011 WL 1496056, at \*3 (N.D. Cal. Apr. 20, 2011)

## OPINION

1 2 3 4 UNITED STATES DISTRICT COURT 5 NORTHERN DISTRICT OF CALIFORNIA 6 7  
OPERATING ENGINEERS HEALTH Case No. 25-cv-02524-KAW AND WELFARE TRUST  
FUND, et al., 8 Plaintiffs, ORDER REASSIGNING CASE TO A 9 DISTRICT JUDGE; REPORT  
AND v. RECOMMENDATION TO GRANT IN 10 PART AND DENY IN PART MOTION  
EAGLE ENVIRONMENTAL & FOR DEFAULT JUDGMENT 11 CONSTRUCTION, et al., Re:  
Dkt.

No. 14 12 Defendants. 13 On March 13, 2025, Plaintiffs filed the instant case against Defendants  
Eagle 14 Environmental & Construction and Ronald Batiste, asserting violations of the Employee  
15 Retirement Income Security Act of 1974 (“ERISA”). (Compl., Dkt. No. 1.) 16 Pending before  
the Court is Plaintiffs’ motion for default judgment. (Mot. for Default J., 17 Dkt.

No. 14.) Plaintiffs seek an order requiring Defendants to submit contribution reports or 18  
payments for hours worked from May 2016 to the present, and to comply with an audit of payroll  
19 records for the purposes of determining whether they made full payment of sums owed for the  
20 period of January 1, 2017 through December 31, 2021. (Id. at 1.) Defendants are in default and  
21 have not filed an opposition.

(See Dkt. No. 10.) 22 On September 18, 2025, the Court held a hearing, at which Defendants did  
not attend. 23 (See Dkt. No. 23.) Since Defendant, by virtue of being in default, has not consented  
to magistrate 24 judge jurisdiction, the Court REASSIGNS this action to a district judge with the  
25 RECOMMENDATION that Plaintiffs’ motion for default judgment be GRANTED IN PART  
and 26 DENIED IN PART.

27 I. BACKGROUND 1 Operating Engineers Local 3 Heavy and Highway Trust is a Trust  
established under the Labor 2 Management and Relations Act (“LMRA”). (Compl. ¶ 2.) The  
principal offices of Plaintiff Trust 3 Funds are in Alameda, California. (Compl. ¶ 7.) 4 On  
November 1, 2002, Defendant Batiste, acting on behalf of Defendant Eagle 5 Environmental  
Construction, entered into the Independent Northern California Construction 6 Agreement (the

“Independent Agreement”) with Operating Engineers Local Union No. 3 of the 7 International Union of Operating Engineers, AFL-CIO (“Union”).

(Compl. ¶ 10; Brown Decl. ¶ 3, 8 Exh. A (“Independent Agreement”), Dkt. No. 14-2.) The Independent Agreement provides that 9 when the individual employer is a corporation, its principal shareholder(s) personally guarantee all 10 payment of wages, fringe benefit contributions, liquidated damages, interest, and collections costs, 11 including but not limited to attorney’s fees and audit fees.

(Brown Decl. ¶ 3; Independent 12 Agreement ¶ 12.) 13 The Independent Agreement incorporates the Master Agreement between the Union and the 14 Signatory Associations (“Master Agreement”). (Compl. ¶ 10; Brown Decl. ¶¶ 4-5; Independent 15 Agreement § 2.)

The Master Agreement, in turn, incorporates the terms of the Trust Agreements 16 establishing Plaintiff Trust Funds. (Compl. ¶ 12; Brown Decl. ¶ 7, Exh. D (“2023 Master 17 Agreement”) § 12.01.03.) The Master Agreement requires that employers make contributions to 18 Plaintiff Trust Funds based on the hours worked by their employees. (Compl. ¶¶ 12-14; Brown Decl.

19 ¶¶ 6; 2023 Master Agreement § 12.01.00.) Contributions are due by the fifteenth day of the month 20 following the month in which hours were worked and are considered delinquent if not received by 21 the twenty-fifth day of that month. (Comp. ¶ 14; Brown Decl. ¶ 8, 2023 Master Agreement § 22 12.01.02; Brown Decl., Exh. E (“Trust Agreement”) § 10(A).) If contributions are delinquent, the 23 Master Agreement and Trust Agreements mandate that the employer pay interest (10% per annum) 24 and liquidated damages (10% prior to litigation and 20% after litigation has been initiated) on the 25 delinquent contributions.

(Compl. ¶ 14; Brown Decl. ¶ 8; 2023 Master Agreement §§ 12.13.01-02; 26 Trust Agreement §§ 10(A)(3)-(4).) The Master Agreement further provides for reimbursement of 27 attorney’s fees and costs, audit fees, and all other expenses incurred in collection of delinquent 1 Additionally, the Master Agreement provides for an audit of the books and records of 2 signatory employers.

(Compl. ¶ 15; Brown Decl. ¶ 13; 2023 Master Agreement § 12.01.04.) The 3 Trust Agreements also provide for an audit of the books and records of signatory employers. 4 (Compl. ¶ 15; Brown Decl. ¶ 14; Trust Agreement § 1.) 5 On November 29, 2022, Plaintiff Trust Funds’ Collection Office sent a letter to Defendants 6 advising that its account had been selected by the Trust Funds for a payroll record audit for the 7 period of January 1, 2017 through December 31, 2021.

(Brown Decl. ¶ 15, Exh. F.) Defendants did 8 not respond. (Brown Decl. ¶ 16.) On November 27, 2024, Plaintiffs’ counsel sent a demand letter to 9 Defendant Eagle Environmental Construction with attention to Defendant Batiste. (Do Decl. ¶ 7, 10 Dkt. No. 14-4.) Defendants again failed to respond. (Do Decl. ¶ 8.)

To date, the requested 11 contribution reports and payroll documents have not been provided and remain outstanding. (Brown 12 Decl. ¶ 19; Quackenbush Decl. ¶ 5, Dkt. No. 14-1.) 13 On March 13, 2025, the instant case was filed based on the failure to comply with the audit 14 for the period of January 1, 2017 through December 31, 2021, as well as the failure to report and pay 15 contributions for hours worked during the months of May 2016 through January 2025.

(Compl. ¶¶ 16 16-17.) Plaintiffs sought compliance with an audit and the payment of any unpaid contributions 17 (including those found on an audit), interest and liquidated damages on the unpaid contributions, and 18 attorney's fees and costs. (Compl. at 7.) 19 On April 10, 2025, Defendants were personally served with the complaint and summons. 20 (Dkt. No. 8.)

After Defendants failed to respond, Plaintiffs requested entry of default on May 2, 21 2025. (Dkt. No. 9.) On May 6, 2025, the Clerk entered default as to Defendants. (Dkt. No. 10.) On 22 August 5, 2025, Plaintiffs filed the instant motion for default judgment.

The motion for default 23 judgment was mailed to Defendants on August 5, 2025. (Dkt. No. 17.) To date, Defendants have 24 neither appeared nor filed an opposition to Plaintiffs' motion for default judgment. 25 II. LEGAL STANDARD 26 Federal Rule of Civil Procedure 55(b)(2) permits a court to enter a final judgment in a case 27 following a defendant's default.

Shanghai Automation Instrument Co. v. Kuei, 194 F. Supp. 2d 1 999 (citing Draper v. Coombs, 792 F.2d 915, 924-25 (9th Cir. 1986)). 2 Before assessing the merits of a default judgment, a court must confirm that it has subject 3 matter jurisdiction over the case and personal jurisdiction over the parties, as well as ensure the 4 adequacy of service on the defendant.

See In re Tuli, 172 F.3d 707, 712 (9th Cir. 1999). If the 5 court finds these elements satisfied, it turns to the following factors ("the Eitel factors") to 6 determine whether it should grant a default judgment: 7 (1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff's substantive claim, (3) the sufficiency of the complaint, (4) 8 the sum of money at stake in the action[,] (5) the possibility of a dispute concerning material facts[,] (6) whether the default was due 9 to excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decision on the merits.

10 11 Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986) (citation omitted). In this analysis, "the 12 well-pleaded allegations of the complaint relating to a defendant's liability are taken as true." 13 PepsiCo, Inc. v. Cal. Sec. Cans, 238 F. Supp. 2d 1172, 1175 (C.D. Cal. 2002) (citing Televideo 14 Sys., Inc. v. Heidenthal, 826 F.2d 915, 917-18 (9th Cir.

1987)). Nevertheless, default does not 15 compensate for essential facts not within the pleadings and those legally insufficient to prove a 16 claim. Cripps v. Life Ins. Co. of N. Am., 980 F.2d 1261, 1267 (9th Cir. 1992). 17 III. DISCUSSION 18 A. Jurisdiction and Service of Process 19 In

considering whether to enter default judgment, a district court must first determine 20 whether it has jurisdiction over the subject matter and the parties to the case.

In *re Tuli*, 172 F.3d 21 707, 712 (9th Cir. 1999). 22 i. Subject Matter Jurisdiction 23 In this action, Plaintiffs assert claims to enforce the terms of their Agreements and to 24 enforce provisions of ERISA. This Court has subject matter jurisdiction pursuant to 29 U.S.C. § 25 1132, which provides that plan fiduciaries can bring civil actions to enforce the terms of the plan.

26 Further, jurisdiction exists in this Court over all claims by virtue of the LMRA, specifically 29 27 U.S.C. § 185, as Plaintiffs seek to enforce the terms and conditions of a collective bargaining 1 ii. Personal Jurisdiction 2 The Court can exercise personal jurisdiction over Defendants pursuant to Section 502(e)(2) 3 of the Employee Retirement Income Security Act of 1974 (“ERISA”).

Under Section 502(e)(2), 4 an action may be brought against a defendant: 5 ... in the district where the plan is administered, where the breach took place, or where a defendant resides or may be found, and 6 process may be served in any other district where a defendant resides or may be found. 7 8 29 U.S.C. § 1132(e)(2); *Cripps v. Life Ins. Co. of N. Am.*, 980 F.2d 1261 (9th Cir.

1992); *Schuett v. 9 FedEx Corporation Retirement Appeals Comm.*, 2015 WL 4484153, at \*5 (N.D. Cal. July 22, 10 2015) (“service on a defendant in an ERISA case anywhere in the United States is sufficient to 11 establish personal jurisdiction, and there is no need to engage in the ‘minimum contacts’ 12 analysis”) (emphasis added); *Action Embroidery Corp. v. Atl.*

*Embroidery, Inc.*, 368 F.3d 1174, 13 1180 (9th Cir. 2004). Here, Plaintiff Trust Funds are administered in this district at their principal 14 place of business in Alameda, California. (Compl. ¶ 7.) 15 Venue is conferred upon this court by ERISA § 502, 29 U.S.C. § 1132. Where an action is 16 brought under ERISA § 502 in a district court of the United States, it may be brought at the 17 plaintiff’s discretion, in the district where the plan is administered, where the breach took place, or 18 where a defendant resides or may be found.

Again, because Plaintiff Trust Funds are administered 19 in Alameda, California, this matter is properly assigned to this district. 20 iii. Service of Process 21 Defendants were personally served with the complaint and summons. (Dkt. No. 8.) 22 Defendants failed to answer, and default was duly entered. (Dkt. No. 10.) 23 B. Application to the Case at Bar 24 Since the Court has jurisdiction in this matter, this Court must turn to the Eitel factors to 25 determine whether the entering of a default judgment is appropriate in this matter.

26 i. Prejudice to Plaintiff 27 Federal courts have exclusive jurisdiction for claims arising under ERISA, so denial of 1 *Health & Welfare Trust Fund v. RT/DT, Inc.*, C 12-05111 JSW, 2013 WL 2237871 at \*4 (N.D. 2 Cal. May 21, 2013). Plaintiffs would, therefore, be prejudiced if the Court did not enter default 3 judgment. 4 ii. Merits of Plaintiff’s Claims and the Sufficiency of the

Complaint 5 The second and third Eitel factors focus on the merits of Plaintiffs' substantive claim and 6 the sufficiency of the Complaint.

Eitel, 782 F.2d at 1471–72. A party seeking default judgment 7 must state a valid claim upon which it may recover. *Walters v. Statewide Concrete Barrier, Inc.*, 8 2005 U.S. Dist. LEXIS 49433, at \*8 (N.D. Cal. Sept. 2, 2005). 9 An order allowing Plaintiffs to audit Defendants' records is warranted as it is “well within 10 the authority of the trustees as outlined in the trust documents” and is part of “proper plan 11 administration.” Cent.

*States, Se. v. Sw. Areas Pension Fund v. Cent. Transp. Inc.*, 472 U.S. 559, 12 582 (1985). Further, if the audit finds that there are delinquent contributions, courts have 13 “retain[ed] jurisdiction to amend a default judgment to more accurately reflect the plaintiffs' 14 damages where some aspects of damages have not been determined.” *Operating Eng's' Health 15 & Welfare Trust Fund v. Cal Excavation & Underground, Inc.*, Case No. 18-cv-6530-JCS, 2020 16 U.S. Dist.

LEXIS 32149, at \*18 (N.D. Cal. Jan. 28, 2020); see also *Bd. of Trs. of the Laborers 17 Health & Welfare Trust Fund for N. Cal. v. Atoll Topui Island, Inc.*, Case No. 06-cv-3059-SBA, 18 2007 U.S. Dist. LEXIS 4307, at \*2 (N.D. Cal. Jan. 22, 2007) (permitting the plaintiffs “to move 19 the Court to amend the Judgment to include additional amounts found owing following the 20 audit”).

21 Here, Defendant Eagle Environmental Construction entered into an Independent 22 Agreement, thus becoming bound to the Master Agreements and Trust Agreements. (Compl. ¶¶ 23 10, 12.) The Independent Agreement also provided that the principal shareholder -- alleged to be 24 Defendant Batiste -- personally guaranteed all payment of wages, fringe benefit contributions, 25 liquidated damages, interest, and collection costs.

(Compl. ¶ 11; Independent Agreement ¶ 12.) 26 Pursuant to the Master and Trust Agreements, Defendant Eagle Environmental Construction was 27 required to make timely contributions and comply with audit requests. (Compl. ¶¶ 13-15.) 1 2017 through December 31, 2021, as well as failed to report and pay contributions for hours 2 worked by their employees during the period of May 2016 through January 2025.

(Compl. ¶¶ 16- 3 17.) Accordingly, Plaintiffs have successfully pled a case under ERISA entitling them to an audit. 4 The second and third Eitel factors weigh in favor of granting their motion for default judgment. 5 iii. Sum of Money at Stake 6 The fourth Eitel factor assesses the reasonableness of the potential award if a default 7 judgment is entered.

In making this assessment, the Court must consider the amount of money at 8 stake in relation to the seriousness of Defendant's conduct. *Eitel*, 782 F.2d at 1471. If the sum of 9 money at issue is reasonably proportionate to the harm caused by Defendant's actions, properly 10 documented, and contractually justified, then default judgment is warranted. *Bd. of Trs. of Cal. 11 Metal Trades v. Pitchometer Propeller*, 1997 WL 797922, at \*2 (N.D.

Cal. Dec. 15, 1997). A 12 default judgment is only disfavored when a large amount of money is involved or is unreasonable 13 in light of Defendant's actions. *Truong Giang Corp. v. Twinstar Tea Corp.*, 2007 WL 1545173, at 14 \*12 (N.D. Cal. May 29, 2007).

In determining if the amount at stake is reasonable, the Court may 15 consider a plaintiff's declarations, calculations, and other documentation of damages. *Id.* 16 Here, Plaintiffs seek an injunction as well as attorney's fees of \$3,020.50 and \$1,421.42 in 17 costs. (Mot. for Default J. at 10.)

After some adjustments as discussed below, the Court finds 18 that the amount sought is reasonable because the fees and costs were incurred due to Defendants' 19 failure to comply with the audit. Accordingly, this factor weighs in favor of default judgment. 20 iv.

The Possibility of a Dispute Concerning Material Facts 21 The fifth Eitel factor considers the possibility of dispute as to any material facts of the 22 case. Defendants have not participated in this action and have not made any attempt to contest any 23 of Plaintiffs' material facts or legal assertions or moved to set aside the entry of default despite 24 being served with all papers, including the instant motion for default judgment.

Thus, the 25 possibility of a dispute regarding Defendant's liability for damages is unlikely, and this factor weighs in 26 favor of default judgment. 27 v. Whether Default was a Result of Excusable Neglect 1 of excusable neglect.

Under this analysis, the Court considers whether Defendants were put on 2 adequate notice to apprise it of the pendency of the action brought against it. *Phillip Morris USA, 3 Inc. v. Castworld Prod., Inc.*, 219 F.R.D. 494, 500 (C.D. Cal. 2003).

In addition, the Court also 4 considers whether the circumstances surrounding Defendant's failure to answer the complaint are 5 sufficient to excuse or justify its default. *Shanghai Automation Instrument Co. v. Kuei*, 194 F. 6 Supp. 2d 995, 1005 (N.D. Cal. 2001) (default cannot be attributed to excusable neglect where 7 defendants were properly served with the complaint, the notice of entry of default, and the papers 8 in support thereof).

9 Here, Defendants were properly served with the summons and complaint, as well as with 10 the instant motion for default judgment, and have still failed to appear in this action. 11 Consequently, there is nothing to suggest that Defendants' failure to appear and litigate this matter 12 is based on excusable neglect. This factor weighs in favor of default judgment.

13 vi. Federal Rules Preference for a Decision on the Merits 14 After an examination of these facts in the aggregate, this Court finds that Eitel factors one 15 through six outweigh the Federal Rules of Civil Procedure's preference for a decision on the 16 merits.

The Court therefore recommends that default judgment be granted. 17 IV. DAMAGES AND INJUNCTIVE RELIEF 18 After entry of default, well-pleaded factual allegations in the complaint are taken as true, 19 except as to the amount of damages. *Fair Hous. of Marin v. Combs*, 285 F.3d 899, 906 (9th Cir. 20 2002).

To recover damages after securing a default judgment, a plaintiff must prove the relief it 21 seeks through testimony or written affidavit. *Bd. of Trs. of the Boilermaker Vacation Trust v. 22 Skelly, Inc.*, 389 F. Supp. 2d 1222, 1226 (N.D. Cal. 2005); see *Pepsico, Inc.*, 238 F. Supp. 2d at 23 1175 (citing *Televideo Sys., Inc.*, 826 F.2d at 917-18). 24 Again, Plaintiffs in this case seek an order that Defendants comply with Plaintiffs' request 25 for an audit, including providing contribution reports for May 2016 through the present.

(Pls.' 26 Mot. for Default J. at 14.) Plaintiffs also request attorney's fees and costs incurred to date. 27 As discussed above, Plaintiffs are entitled to an injunction in this case. It is also 1 motion to amend the judgment after they complete the audit if the audit shows that there are still 2 unpaid contributions. 3 Plaintiffs also seek reasonable attorney's fees and costs per § 502(g)(2).

(Pls.' Mot. for 4 Default J. at 12.) Section 502(g)(2) mandates attorney's fees and costs in a successful action to 5 enforce § 515 for unpaid contributions. Here, however, Plaintiffs have not demonstrated that there 6 are unpaid contributions; indeed, the very purpose of the audit is to determine whether there are 7 unpaid contributions.

Thus, § 502(g)(2) does not apply. 8 Section 502(g)(1), however, allows a court, in its discretion, to award reasonable attorney's 9 fees and costs in a successful ERISA action. See *Cal Excavation & Underground, Inc.*, 2020 U.S. 10 Dist. LEXIS 32149, at \*15.

In determining whether to award attorney's fees under this section, 11 the court considers: "(1) the degree of the opposing parties' culpability or bad faith; (2) the ability 12 of the opposing parties to satisfy an award of fees; (3) whether an award of fees against the 13 opposing parties would deter others from acting under similar circumstances; (4) whether the 14 parties requesting fees sought to benefit all participants and beneficiaries of an ERISA plan or to 15 resolve a significant legal question regarding ERISA; and (5) the relative merits of the parties' 16 positions." *Hummell v. S. E. Rykoff & Co.*, 634 F.2d 446, 453 (9th Cir.

1980). 17 The Court finds that the Hummell factors weigh in favor of awarding attorney's fees. First, 18 Defendants are culpable because they failed to submit to the audit. Second, Defendants' financial 19 status is unknown because they have failed to participate in the audit.

Third, an award of fees may 20 deter future violations by other signatories. Fourth, while the legal issue is not significant, audits 21 are an important tool for compliance. See *Cal Excavation & Underground*, 2020 U.S. Dist. 22 LEXIS 32149, at \*16. Ensuring that employer signatories

comply with audits is therefore 23 beneficial to all participants and beneficiaries of ERISA plans, as it ensures that payments are 24 being made in full.

Finally, Defendants have not attempted to defend its position on the merits; 25 rather, Defendants have repeatedly promised to participate in the audit, but failed to do so. 26 Accordingly, the Court recommends granting Plaintiffs' request for attorney's fees. 27 Once fees under ERISA are awarded, the court must calculate the lodestar amount to 1 The lodestar amount is determined by "multiplying the number of hours reasonably expended on 2 the litigation by a reasonable hourly rate." Id. (internal quotations omitted).

In awarding 3 attorney's fees, courts must look to the prevailing market rates in the relevant community. *Bell v. 4 Clackamas Cnty.*, 341 F.3d 858, 860 (9th Cir. 2003). 5 Here, Plaintiffs seek hourly rates of \$325-375 for Attorney Tino X. Do and \$185-205 for 6 Paralegal Alicia Wood. (Do Decl. ¶ 17.) Courts in this district have found these rates to be 7 reasonable.

See *Operating Eng'rs Health & Welfare Tr. Fund for N. Cal. v. Precision Drilling, 8 Inc.*, No. 21-cv-07893-EMC, 2025 U.S. Dist. LEXIS 75735, at \*18 (N.D. Cal. Apr. 21, 2025) 9 (approving shareholder rates of \$250-375, associate rates of \$245-375, and paralegal rates of 10 \$135-205). Considering the experience of counsel, the Court finds that the hourly rates are 11 reasonable and consistent with the prevailing market rates in the Northern District.

12 Plaintiffs also provide their billing records for time spent on this case. Upon review, the 13 Court generally finds that the number of hours billed is reasonable. That said, Plaintiffs also 14 include clerical work by Ms. Woods, such as calendaring, e-filing, and mailing documents. Such 15 clerical tasks are not compensable. See *Rodgers v. Claim Jumper Rest., LLC*, No. 13-CV-5496 16 YGR, 2015 U.S. Dist.

LEXIS 54164, at \*25 (N.D. Cal. Apr. 24, 2015) ("purely secretarial or 17 clerical tasks are generally not recoverable in a motion for attorney's fees and should instead be 18 considered a part of normal overhead costs"); *Nadarajah v. Holder*, 569 F.3d 906, 921 (9th Cir. 19 2009) (agreeing that the "filing, transcript, and document organization time was clerical in nature 20 and should have been subsumed in firm overhead rather than billed at paralegal rates"); *CNC 21 Software, Ltd. Liab.*

*Co. v. Glob. Eng'g Ltd. Liab. Co.*, No. 22-cv-02488-EMC, 2023 U.S. Dist. 22 LEXIS 83880, at \*26 (N.D. Cal. May 12, 2023) (reducing time spent for clerical tasks including 23 calendaring).) 24 Accordingly, the Court reduces the following entries because they include clerical work: Date: Task: Hours Hours Hours Monetary 25 Claimed: Permitted: Reduced: Deduction: 26 4/11/2025 E-mails with Dietz.4.2.2 \$41.00 Investigation regarding proofs 27 of service, along with declaration.

Compile relevant returned executed. Calendar 1 relevant deadlines. 2 6/3/2025 Review file regarding 1.6 1.0.6 \$123.00 upcoming litigation deadlines. 3 Telephone call with T. Do regarding

same and further 4 handling. Draft and e-file proof of service regarding Clerk's 5 notice of entry of default as to 6 Defendants. Issue same to Defendants via U.S. Post 7 Office.

Draft and e-file request to continue case management 8 conference. Issue same to judge's proposed order unit. 9 Issue same to Defendants via 10 U.S. Post Office. Total: \$164.00 11 Taking into account this deduction, the Court recommends that Plaintiffs' request for 12 attorney's fees be reduced from \$3,020.50 to an award of \$2,856.50 in attorney's fees. 13 Finally, Plaintiffs seek reimbursement of costs in the amount of \$1,421.42.

(Pls.' Mot. for 14 Default J. at 14.) This consists of investigation and service fees, legal research, and filing fees. 15 (Do Decl. ¶ 21, Exh. F.) Such costs are recoverable. See Pension Plan for Pension Tr. Fund for 16 Operating Eng'rs v. J&K Sweeping, No. 14-cv-01179-JCS, 2014 U.S. Dist. LEXIS 129691, at \*22 17 (N.D. Cal. Aug. 22, 2014) ("With respect to Plaintiffs' request for costs for messenger service, 18 legal research, and investigation, such costs are available on the basis that they are generally billed 19 as attorney's fees.").

Thus, Plaintiffs are entitled to \$1,421.42 in costs. 20 V. CONCLUSION 21 For the reasons stated above, the undersigned RECOMMENDS that Plaintiffs' motion for 22 default judgment be GRANTED. Defendants should be ordered to immediately comply with 23 Plaintiffs' audit request, including providing contribution reports for May 2016 through the 24 present. Defendants should also be ordered to pay \$2,856.50 in attorney's fees and \$1,421.42 in 25 costs, for a total of \$4,277.92.

Finally, the district court should retain jurisdiction to allow 26 Plaintiffs to submit a further motion to amend the judgment should the audit reveal unpaid 27 contributions. 1 No later than 3 days from the date of this report and recommendation, Plaintiffs are 2 || instructed to serve Defendants with a copy by any means reasonably calculated to provide actual 3 notice and file a proof of service to that effect.

Any party may file objections to these 4 || recommendations within 14 days of being served with a copy. See 28 U.S.C. § 636(b); See 28 5 U.S.C. § 636(b)(); Fed. R. Civ. P. 72(b); N.D. Civil L.R. 72-3. The parties are advised that 6 || failure to file objections within the specified time may waive the right to appeal the District 7 Court's order. IBEW Local 595 Trust Funds v. ACS Controls Corp., No. C-10-5568, 2011 WL 8 1496056, at \*3 (N.D.

Cal. Apr. 20, 2011). 9 IT IS SO RECOMMENDED. 10 Dated: October 16, 2025 ' Ku A. WESTMORE = 12 United States Magistrate Judge 13 © 15 16 = 17 Z 18 19 20 21 22 23 24 25 26 27 28