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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff,

v.

TRIMBCO, INC. dba. SHARP
PRECISION MANUFACTURING,

Defendants.

Case No.: 06-6141 PVT

**ORDER GRANTING PLAINTIFF
EEOC'S MOTION FOR DEFAULT
JUDGMENT**

INTRODUCTION

The Equal Employment Opportunity Commission (hereinafter EEOC) filed a complaint against Trimbc, Inc. dba Sharp Precision Manufacturing (hereinafter Trimbc), alleging Trimbc subjected Anna Valdez McAllister and a class of individuals (collectively claimants) to a hostile work environment based on sex and/or national origin.¹ On July, 24, 2008, the court ordered Trimbc to inform the court of its new counsel no later than August 25, 2008. Trimbc failed to comply and EEOC later filed a motion for default judgment. On December 21, 2008, the EEOC served Trimbc with the motion for default. Defendant Trimbc did not oppose or otherwise

¹All parties have consented to the jurisdiction of a U.S. Magistrate Judge.

1 respond to the motion. On February 3, 2008, EEOC appeared for hearing. Trimbcoco did not appear.
2 Having reviewed the papers and considered the arguments of counsel and for the reasons set forth
3 below, the court grants EEOC's motion for default judgment.²

4 BACKGROUND

5 On September 29, 2006, plaintiff EEOC, on behalf of Anna Valdez McAllister and a class of
6 similarly situated employees, filed a complaint alleging defendant Trimbcoco subjected claimants to a
7 hostile work environment based on sex (female) and/or national origin (Hispanic). EEOC filed an
8 action under Section 706 of Title VII of the Civil Rights Act of 1964. On June 27, 2008, Trimbcoco's
9 counsel, Sweeney, Mason, Wilson & Bosomworth, filed a Motion to Withdraw as Attorney of
10 Record. The Court granted the motion on July 24, 2008 and further ordered Trimbcoco to inform the
11 court of its newly engaged counsel no later than August 25, 2008. Trimbcoco failed to comply with
12 the order. Subsequently, EEOC moved this Court for a default judgment against Trimbcoco pursuant
13 to Federal Rule of Civil Procedure 55(b) based on its failure as a corporation to retain counsel.

14 In support of its motion, plaintiff EEOC filed six declarations from the claimants detailing
15 Trimbcoco's alleged unlawful behavior as follows:

16 *1. Liliana Aranda*

17 Chuck Trimble, the owner and CEO of Trimbcoco, called Ms. Aranda a "bitch" on
18 numerous occasions and also made disparaging remarks about her national origin (Mexican). He
19 remarked, "You beaners are all the same." Trimble also physically intimidated Ms. Aranda by
20 throwing documents at her, raising his voice, and looking her body up and down. When personnel
21 from human resources gave her permission to go home because her toddler had become seriously ill,
22 Trimble yelled at Ms. Aranda saying, "See, this is what I get for hiring bitches!" As a result, Ms.
23 Aranda suffered from depression and stress-induced migraine headaches. Her family life
24 deteriorated as she took her stress out on her husband and children.

25 *2. Debra Garza*

26 Trimble would flirt with Ms. Garza and comment about how her clothes fit. When she
27

28 ² The holding of this court is limited to the facts and the particular circumstances underlying the present motion.

1 did not return his flirtation, Trimble began calling her a “fucking idiot” or “fucking bitch.” Trimble
2 verbally berated Ms. Garza in front of her coworkers, customers, and suppliers. Trimble made
3 comments about people of Hispanic heritage to Ms. Garza, including “Cinco de Mayo is coming,
4 you know how these Mexicans get” and he made further derogatory remarks about “beaners.” Ms.
5 Garza woke up in a bad mood every morning, she stressed about the ridicule, she did not sleep well,
6 she vomited, and she developed irritable bowel syndrome. Also, she lost contact with her friends.

7 3. *Laura Jennings*

8 Trimble would flirt with Ms. Jennings in front of coworkers, causing her great
9 embarrassment. He repeatedly told Ms. Jennings that her office and her perfume smelled “like
10 lingerie.” She was forced to pay for Trimble’s escort services in her professional capacity. Trimble
11 begged Ms. Jennings to live with him. He also sent her two emails requesting that she live with him
12 and informing her that they would be magic in bed. Ms. Jennings told Ken Valencia, the general
13 manager, about receiving the emails and he told her that she should go out with Trimble. Trimble’s
14 actions at work affected her relationship at home with her husband. Ms. Jennings dreaded going to
15 work because she felt completely objectified. She felt like Trimble’s sex toy, leading to a general
16 distrust of men, extreme stress and anxiety.

17 4. *Leilani Martinez*

18 Ms. Martinez observed Trimble's behavior toward women in the office. She too, was
19 treated poorly throughout her employment at Trimbleco. Trimble forced her to work up until the day
20 she delivered her child and then required her to return to work on a Saturday, three days after giving
21 birth. Trimble remarked to other employees that, “the baby is sucking her brains out.” Trimble
22 called Ms. Martinez “stupid” and repeatedly told her that she was incompetent. Trimble threw
23 objects in front of Ms. Martinez and made her work overtime and weekends without compensation.
24 Often she cried uncontrollably at work. As a result, Ms. Martinez suffered from diminished self
25 esteem and became anxious and jittery. She also experienced physical problems such as an irritable
26 bowel and vomiting.

27 5. *Anna McAllister*

28 Trimble bombarded Ms. McAllister with derogatory and sexist remarks. He called her

1 names, including “bitch,” “ho,” “truck stop ho,” and called her breasts “jugs” and “tits.” In
2 addition, Trimble used derogatory names regarding Hispanics, such as “wetback,” “beaner,” “stupid
3 Mexican,” and “fucking lazy Mexican.” Trimble even offered Ms. McAllister to clients to perform
4 sexual favors. She informed Trimble she did not appreciate his harassing and insulting conduct, but
5 he did not stop. He told others such as Ms. Aranda that Ms. McAllister looked like a “ho” in some
6 outfits. Trimble’s comments caused Ms. McAllister to cry and suffer from low self-esteem. The
7 environment at work affected her personal life and changed relationships at home with her kids. She
8 suffered severe stress and anxiety.

9 *6. Melinda Safford*

10 Trimble called Ms. Safford names such as “fucker,” “stupid fucker,” “bitch,” and
11 “fucking moron.” He yelled and pointed his finger in her face. Trimble taunted Ms. Safford if she
12 started crying. He said, “I can’t help it if you’re a woman.” Trimble also called her “Chuck’s bitch”
13 and referred to her menstrual cycle. Trimble made her work late hours, sometimes more than 17
14 hours and complete the assignments her male coworkers did not finish. Trimble called her a
15 “Wagon Burner” when he found out about her Native American heritage. Trimble’s conduct and the
16 demeaning work environment at Trimco caused Ms. Safford to cry at least three days a week after
17 work. She also suffered from lack of sleep, substantial weight gain, frequent vomiting and
18 depression.

19 **DISCUSSION**

20 **A. Default Judgment**

21 When a party against whom a judgment for affirmative relief is sought “has failed to plead or
22 otherwise defend, and that failure is shown by affidavit or otherwise, “the court must enter the
23 party’s default.” Fed. R. Civ. Proc. 55(a). A corporation may only appear in court through a
24 licensed attorney. *Rowland v. California Men’s Colony*, 506 U.S. 194 (1993) (*citing Osborn v.*
25 *President of Bank of United States*, 22 U.S. 738 (1824)); *Taylor v. Knapp*, 871 F.2d 803, 806 (9th
26 Cir. 1988). A federal district court may enter default judgment against a corporation for failure to
27 retain counsel to represent it. *United States v. High Country Broadcasting Co.*, F.3d 1244, 1245 (9th
28 Cir. 1993). The factors the court may consider in ruling on a motion to enter default include: the

1 substantive merits of plaintiff's claim; sufficiency of the complaint; the amount of money at stake;
2 the possibility of prejudice to plaintiff if relief is denied; the possibility of dispute as to any material
3 facts in the case; whether default resulted from excusable neglect; and the strong policy of the
4 Federal Rules of Civil Procedure favoring decisions on the merits. *Eitel v. McCool*, 782 F.2d 1470,
5 1471-1472 (9th Cir. 1986).

6 Trimbco failed to defend itself against this action by refusing to abide by the court's July 24,
7 2008 order to obtain counsel. Indeed, since the withdrawal of counsel, Trimbco has not appeared
8 whatsoever. The court finds that EEOC has met the factors to support the entry of default judgment.
9 First, EEOC has established that prejudice to the Claimants would occur if default judgment was not
10 entered by the court. Because Trimbco failed to participate in these proceedings, the Claimants' only
11 recourse for the emotional distress caused by the hostile work environment at Trimbco is the court's
12 entry of default judgment.

13 Second, under Title VII of the 1964 Civil Rights Act, EEOC's claims are meritorious. EEOC
14 filed this action on behalf of a class of aggrieved applicants as deemed appropriate by *General*
15 *Telephone Co. of the Northwest v. E.E.O.C.*, 46 U.S. 318, 324 (1980). Furthermore, EEOC stated a
16 claim upon which relief can be granted. Title VII makes it unlawful for an employer to discriminate
17 against an individual with respect to her conditions or privileges of employment on the basis of sex
18 and/or national origin. EEOC's complaint alleges a pattern of abuse and numerous instances of
19 sexual harassment and national origin harassment which created an offensive, abusive, intimidating,
20 and hostile environment. Said allegations deprived the Claimants of equal employment
21 opportunities. Moreover, upon entry of default, the complaint's factual allegations regarding liability
22 are taken as true. *Geddes v. United Fin. Group*, 559 F.2d 557, 560 (9th Cir. 1977). Therefore, there
23 are no factual disputes before the court.

24 Third, Trimbco has not shown excusable neglect. On July 29, 2008, former counsel served
25 Trimbco via email and mail with the order requiring it to obtain alternate counsel. The court stayed
26 the action for 30 days for Trimbco to obtain alternate counsel. Trimbco, however, failed to comply
27 with the court order, failed to hire an attorney, and failed to communicate with the court to
28 demonstrate any effort whatsoever to engage counsel. In addition, EEOC served all of the

1 documents related to the motion for default judgment to Trimbcos last known business address as
2 well as to Chuck Trimble on December 21, 2008. Pursuant to EEOCs declaration, Trimbcos
3 continues to conduct business in the area and therefore has no basis for failing to comply with this
4 Courts order (Declaration of Marcia L. Mitchell ¶ 4-5).

5 Fourth, public policy will not be harmed by granting EEOCs motion for default judgment.
6 Although the Federal Rules of Civil Procedure favor a ruling on the merits, such a decision cannot
7 be made in this instance. Trimbcos failed to hire alternate counsel and has made no effort to
8 demonstrate excusable neglect. As such, the facts alleged are uncontested. Therefore, default
9 judgment is appropriate here.

10 **B. Remedies**

11 Damages under Title VII may be recovered from a respondent who engaged in unlawful,
12 intentional discrimination in the form of compensatory and punitive damages. 42 U.S.C.
13 1981a(a)(1). In addition, monetary as well as injunctive relief strive to make whole the persons
14 injured by discriminatory conduct and to restore them as fully as possible to the position they
15 otherwise would have been absent discrimination. *Franks v. Bowman Transportation Co.*, 424 U.S.
16 747, 763-64 (1976).

17 *I. Compensatory Damages*

18 Compensatory Damages may be awarded for the following injuries suffered by the
19 Claimants: "future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss
20 of enjoyment of life, and other nonpecuniary losses." 42 U.S.C. 1981a(b)(3). A victims testimony
21 alone is a sufficient basis on which to award compensatory damages for emotional pain and
22 suffering. *Chalmers v. City of Los Angeles*, 762 F.2d 753, 761 (9th Cir. 1985). The statutory cap for
23 compensatory and punitive damages is \$50,000.00 per claimant for an employer with 15 to 100
24 employees. 42 U.S.C. 1981a(b)(3)(A).

25 Accordingly, the court approves the Claimants' request for compensatory damages for the
26 emotional distress, pain, and suffering caused by Trimbcos discriminatory conduct. By declaration,
27 each Claimant has provided evidence of her severe emotional distress. Accordingly, the court shall
28 award each of the Claimants compensatory damages.

1 granted;

2 2. Defendant shall pay to Liliana Aranda compensatory and punitive damages in the amount
3 of \$50,000.00 (fifty-thousand dollars and no cents);

4 3. Defendant shall pay to Debra Garza compensatory and punitive damages in the amount of
5 \$50,000.00 (fifty-thousand dollars and no cents);

6 4. Defendant shall pay to Laura Jennings compensatory and punitive damages in the amount
7 of \$50,000.00 (fifty-thousand dollars and no cents);

8 5. Defendant shall pay to Leilani Martinez compensatory and punitive damages in the
9 amount of \$50,000.00 (fifty-thousand dollars and no cents);

10 6. Defendant shall pay to Anna McAllister compensatory and punitive damages in the
11 amount of \$50,000.00 (fifty-thousand dollars and no cents);

12 7. Defendant shall pay to Melinda Safford compensatory and punitive damages in the
13 amount of \$50,000.00 (fifty-thousand dollars and no cents);

14 8. The total judgment for all claimants specified above shall total \$300,000.00 (three
15 hundred thousand dollars and no cents);

16 9. Plaintiff shall serve this order and the judgment no later than 30 days from the date of
17 this order and defendant shall pay the above-specified amounts no later than 30 days after
18 service of the order and judgment;

19 10. Defendant, its officers, successors and assigns and all persons in active concert or
20 participation with them is hereby ENJOINED from engaging in harassment based on sex
21 and/or national origin and any other employment practice which discriminates on the basis of
22 sex and/or national origin.

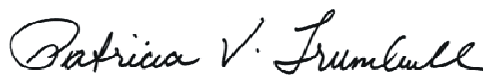
23 11. Defendant is hereby ORDERED to institute and carry out policies, practices, and
24 programs which provide equal employment opportunities for its employees and which
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eradicate the effects of its past and present unlawful employment practices.

IT IS SO ORDERED.

Dated: March 17, 2009



PATRICIA V. TRUMBULL
United States Magistrate Judge

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