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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Cemex Construction Materials South,
LLC; United States for the use and benefit
of Cemex Materials South LLC,

No. CV-11-8012-PCT-FJM

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ORDER

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Plaintiffs,

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vs.

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Grady's Quality Excavating Inc.; Grady L.
Hopson; Cheryl L. Hopson; Ronald F.
Wilson; Montana Builders LLC,

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Defendants.

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Cheryl L. Hopson; Grady L. Hopson;
Grady's Quality Excavating Inc.

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Cross Claimants

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vs.

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Montana Builders LLC; Ronald F. Wilson)

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Cross Defendants

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The United States, through the Department of Agriculture, entered into a contract with defendant Montana Builders, LLC, for a construction project at Oak Creek Complex-Pine Flat Campground (the "Project"). Montana Builders, as the general contractor on the Project and pursuant to the Miller Act, 40 U.S.C. § 3131(b)(2), furnished a payment bond to the

1 United States. Defendant Ronald Wilson is surety on the payment bond. Montana Builders
2 contracted with defendant Grady's Quality Excavating as subcontractor on the Project.
3 Grady's in turn contracted with plaintiff Cemex Construction Materials South, LLC, for the
4 purchase of construction materials. Cemex filed this action against Grady's and its principals
5 for their failure to pay Cemex for materials in the principal amount of \$48,465.58. Cemex
6 also named as defendants Montana Builders and Ronald Wilson as surety under the payment
7 bond pursuant to the Miller Act. See 40 U.S.C. § 3133(b)(2). Grady's in turn filed a cross-
8 claim against Montana Builders and Wilson, for Montana Builder's failure to pay Grady's
9 under the subcontract. When Montana Builders and Wilson failed to answer, Cemex sought
10 and was granted default judgment against Montana Builders and Wilson in the amount of
11 \$48,465.58, plus interest (doc. 42).

12 We now have before us Grady's motion for default judgment (doc. 44), and motion
13 for attorney's fees (doc. 45) against Montana Builders and Wilson.

14 Grady's filed a cross-claim against Montana Builders and Ronald Wilson for work
15 and materials Grady's furnished in the principal sum of \$61,963.05, pursuant to the
16 subcontract between Grady's and Montana Builders. Montana Builders and Wilson were
17 served with the cross-claim on June 21, 2011 (docs. 33, 34), but neither filed an answer. The
18 clerk of the court entered default against Montana Builders and Wilson in favor of Grady's
19 on July 15, 2011. Grady's now seeks entry of default judgment and contends that its claim
20 is for a sum certain in the principal amount of \$61,963.05, plus interest. Grady's claim is
21 sufficiently supported by affidavit (doc. 44 at 5-7). Therefore, we grant Grady's motion for
22 entry of default judgment against Montana Builders and Ronald Wilson in the amount of
23 \$61,963.05, plus interest at the rate of one and one half percent from the date the payment
24 was due until paid in full. See A.R.S. § 32-1129.02(H).

25 In its motion for default judgment, Grady's also asks for attorney's fees in the amount
26 of \$15,154.00 and costs in the amount of \$494.00 that it claims it "is obligated to pay to
27 Cemex as a direct result of Montana Builders failure to pay Grady's" (doc. 44 at 2). Grady's
28 provides no authority or documentary support for its claim for these fees and costs and

1 therefore we do not include them in the default judgment.

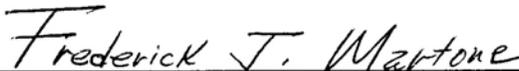
2 Grady's also filed a separate motion for attorney's fees in the amount of \$6,539.50,
3 pursuant to A.R.S. § 12-341.01, and taxable costs in the amount of \$430.40, for amounts it
4 incurred in attempting to collect the debt owed by Montana Builders. Grady's claim is
5 sufficiently supported by affidavit, therefore we grant Grady's motion for attorney's fees and
6 costs in the amount of \$6,969.90.

7 **IT IS ORDERED GRANTING** Grady's motion for default judgment (doc. 44)
8 against Montana Builders and Ronald Wilson in the amount of \$61,963.05, plus interest at
9 the rate of one and one half percent from the date the payment was due until paid in full. See
10 A.R.S. § 32-1129.02(H).

11 **IT IS FURTHER ORDERED GRANTING** Grady's motion for attorney's fees and
12 costs (doc. 45) against Montana Builders and Wilson n the amount of \$6,969.90.

13 DATED this 5th day of October, 2011.

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Frederick J. Martone
United States District Judge