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28UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIALARRY TOTTEN, *et al.*,

No. C-05-5447 EMC

Plaintiffs,

v.

**ORDER GRANTING PLAINTIFFS'
MOTION TO AMEND JUDGMENT**

LUCAS CONCRETE, INC.,

(Docket No. 29)Defendant.

Previously, the parties in the above-referenced case stipulated to a judgment, which this Court approved on September 15, 2006. *See* Docket No. 24 (order). Plaintiffs are now moving to amend the judgment based on the failure of Defendant Lucas Concrete, Inc. (“LCI”) to comply with the terms of the stipulated judgment. No opposition to Plaintiffs’ motion has been filed. Having considered Plaintiffs’ motion and accompanying submissions, as well as all other evidence of record, the Court hereby **GRANTS** Plaintiffs’ motion.

I. FACTUAL & PROCEDURAL BACKGROUND

Plaintiffs initiated this lawsuit, seeking confirmation of an arbitration award against LCI in the amount of \$81,996. *See* Docket No. 14 (joint CMC statement). Plaintiffs had been awarded this sum based on the alleged failure of LCI to pay contributions owed to the Trust Funds at issue. The parties ultimately settled the case between themselves and submitted a stipulated judgment to the Court for approval. *See* Docket No. 23 (stipulation). This Court approved the stipulated judgment on September 15, 2006. *See* Docket No. 24 (order).

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1 Under the stipulated judgment, LCI agreed to pay Plaintiffs \$88,612.03, representing the
2 contributions owed to the Trust Funds at issue for the period January 2001 through December 2005.
3 *See* Docket No. 24 (Order ¶ 2). LCI was to pay Plaintiffs sixty monthly installments, each in the
4 amount of \$1,476.86, starting in August 2006. *See* Docket No. 24 (Order ¶ 3). If LCI failed to make
5 any of the scheduled payments, then Plaintiffs were entitled to execute on the judgment in the full
6 amount of \$88,612.03, minus the amount of any payment actually received. *See* Docket No. 24
7 (Order ¶ 3). “If Defendant defaults in the making of any said payments or any part thereof, and if
8 Plaintiffs consult legal counsel with respect thereto, there shall be added to Defendant’s obligation
9 under a modification to this Stipulation for Entry of Judgment reasonable attorneys’ fees, court costs
10 and all other reasonable expenses incurred by Plaintiffs in connection with such suit or claim,
11 including any and all appellate proceedings therein.” Docket No. 24 (Order ¶ 5).

12 Apparently, LCI made only one of the sixty monthly installments owed. *See* Lozano-Batista
13 Decl. ¶ 2. Accordingly, Plaintiffs, through counsel, sent demand letters to LCI (how many is not
14 clear) and also filed a request for a debtor’s examination. *See* Lozano-Batista Decl. ¶ 3. Plaintiffs
15 subsequently canceled the debtor’s examination because they were “unable to serve Defendant with
16 the request, as he [sic] had vacated the business address he [sic] once occupied.” Lozano-Batista
17 Decl. ¶ 3. Approximately a year later, Plaintiffs filed the currently pending motion to amend the
18 judgment.

19 II. DISCUSSION

20 In their motion to amend the judgment, Plaintiffs ask the Court to amend the judgment by
21 setting forth the damages now owed – \$87,135.17, which reflects the one monthly installment paid
22 by LCI – and by adding the fees and costs Plaintiffs have incurred in their attempt to enforce the
23 stipulated judgment.

24 The amendment sought by Plaintiffs is appropriate. As noted above, under the stipulated
25 judgment, Plaintiffs are entitled to execute on the full judgment (minus any payments made) if LCI
26 failed to make any of the scheduled payments. *See* Docket No. 24 (Order ¶ 3). There is uncontested
27 evidence that LCI has failed to make most of the scheduled payments. *See* Lozano-Batista Decl. ¶ 2.
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1 Furthermore, under the stipulated judgment, upon a default by LCI, Plaintiffs are entitled to
2 “reasonable attorneys’ fees, court costs and all other reasonable expenses incurred by Plaintiffs in
3 connection with such suit or claim, including any and all appellate proceedings therein.” Docket
4 No. 24 (Order ¶ 5). Plaintiffs have submitted evidence that, from August 2007 through February
5 2009, they incurred attorney’s fees in the amount of \$1,935 (representing 8.6 hours at an hourly rate
6 of \$225) and paralegal fees in the amount of \$67.50 (representing 0.75 hours at an hourly rate of
7 \$90). See Lozano-Batista Decl. ¶¶ 4, 7. In addition, Plaintiffs incurred costs in the amount of
8 \$69.50, apparently for the attempted service of the order noticing the debtor’s examination. See
9 Lozano-Batista Decl. ¶ 11. These fees and costs are reasonable.

10 **III. CONCLUSION**

11 Accordingly, Plaintiffs’ motion to amend the judgment is granted. The judgment is amended
12 to reflect that LCI is now obligated to pay Plaintiffs the sum of \$89,207.17, which represents
13 \$87,135.17 in damages plus \$2,072 in fees and costs.

14 The hearing on the motion is hereby **VACATED**.

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16 IT IS SO ORDERED.

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18 Dated: April 6, 2009

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21 EDWARD M. CHEN
22 United States Magistrate Judge
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