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UNITED STATES DISTRICT COURT
Northern District of California

GIL CROSTHWAITE, et al.,
Plaintiffs,
v.
TDW CONSTRUCTION, INC., et al.,
Defendants.

No. C 06-6227 MEJ

ORDER TO SHOW CAUSE

On May 15, 2008, the parties in the above-captioned matter entered into a Stipulated Settlement that established a payment plan to satisfy the amounts owed by Defendants to Plaintiffs in this action. Dkt. No. 38. The Stipulated Settlement was signed by Edmundo D. Alire both in his capacity as CFO of TDW Construction Inc. and on behalf of himself individually. *Id.* Subsequently, on June 17, 2008, the parties filed a Request for Stipulated Dismissal, which the Court granted on July 3, 2008. Dkt. Nos. 40, 41. However, “[a]s provided in paragraph 1 of the May 15 stipulated settlement, judgment was not to be entered “until such time, if any, as Defendants TDW CONSTRUCTION INC. and EDMUNDO M. ALIRE default on the stipulated payment terms, as detailed in that Stipulation.” Dkt. No. 41.

Under paragraph 5 of the Stipulated Settlement, the parties agreed that Defendants were indebted to Plaintiff Trust Funds under the terms of the Collective Bargaining Agreement in the total amount of \$138,741.40 as of the May 14, 2008 settlement date. Dkt. No. 38. Under paragraphs 6-8 of the Stipulated Settlement, the parties agreed to compromise the total amount owed to Plaintiff Trust Funds of \$138,741.40 to the amount of \$75,000.00, provided that Defendants made timely payments on the compromised amount of \$75,000.00 pursuant to the schedule set forth Stipulated Settlement and provided that Defendants did not become delinquent on any future contributions after

1 May 14, 2008, the date of the stipulated settlement, at least until the stipulated settlement amount of
2 \$75,000.00 was been paid in full pursuant to the schedule set forth in the Stipulated Settlement. *Id.*

3 Now before the Court is Plaintiffs’ Request for Entry of Judgment Pursuant to Settlement,
4 filed October 28, 2011. Dkt. No. 42. In their Request, Plaintiffs state that Defendants became
5 delinquent on the contributions owing Plaintiff Trust Funds during the period after May 14, 2008, the
6 date of the stipulated settlement, and before the amount of the stipulated settlement was paid in full,
7 on at least 37 occasions, and that Defendants currently owe Plaintiff Trust Funds \$67,861.78 in
8 delinquent contributions. *Id.* at ¶¶ 8-9. In the event of default and failure by Defendants to cure such
9 default, paragraph 9(b) specifically authorizes Plaintiffs to file the Stipulated Settlement with the
10 Court for the purpose of having Judgment entered, paragraph 9.c. provides that a Writ of Execution
11 may be obtained against Defendants without further notice, and paragraph 9.d. provides that
12 Defendant expressly waived all rights to stay of execution and appeal. Dkt. No. 38 at 4-5.

13 Plaintiffs contend that the amounts due under the Stipulated Settlement for Entry of Judgment
14 are as follows:

15	Amount owed as of date of settlement pursuant to	
16	stipulated settlement ¶ 5.	\$138,741.40
17	Additional attorney’s fees (5/15/08 – 4/30/10) incurred	
18	pursuant to stipulated settlement ¶ 9.d,	1,543.00
19	Less payments made under terms of stipulated	
20	settlement	<u>(76,543.02)</u>
21	Amount still owing on stipulated settlement balance pursuant to	
22	stipulated settlement ¶ 9.a.	\$62,198.38
23	Current unpaid contribution balance owing pursuant to stipulated	
24	settlement ¶ 9.a.	67,861.72
25	Additional interest at 12% per annum owing pursuant to stipulated	
26	settlement ¶ 9.a.	15,832.45
27	Liquidated damages at 15% on unpaid contribution balance owing	
28	pursuant to stipulated settlement ¶ 9.a.	78,528.96
	Attorney’s fees (5/01/10 – 10/28/11) incurred and owing pursuant to	
	stipulated settlement ¶ 9.d	4,462.00
	Costs pursuant to stipulated settlement ¶ 9.d	<u>\$138.06</u>
		TOTAL: <u><u>\$229,021.57</u></u>

