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4 UNITED STATES DISTRICT COURT
5 Northern District of California
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7 GIL CROSTHWAITE, et al.,
8 Plaintiffs,
9 v.
10 TDW CONSTRUCTION, INC., et al.,
11 Defendants.

No. C 06-6227 MEJ

ORDER DISCHARGING OSC

**ORDER FOR PARTIES TO MEET
AND CONFER**

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

22 Under paragraph 5 of the Stipulated Settlement, the parties agreed that Defendants were
23 indebted to Plaintiff Trust Funds under the terms of the Collective Bargaining Agreement in the total
24 amount of \$138,741.40 as of the May 14, 2008 settlement date. Dkt. No. 38. Under paragraphs 6-8
25 of the Stipulated Settlement, the parties agreed to compromise the total amount owed to Plaintiff
26 Trust Funds of \$138,741.40 to the amount of \$75,000.00, provided that Defendants made timely
27 payments on the compromised amount of \$75,000.00 pursuant to the schedule set forth Stipulated
28 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 On October 28, 2011, Plaintiffs filed a 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 stipulated settlement ¶ 5.	\$138,741.40
16		
17	Additional attorney’s fees (5/15/08 – 4/30/10) incurred pursuant to stipulated settlement ¶ 9.d,	1,543.00
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19	Less payments made under terms of stipulated settlement	<u>(76,543.02)</u>
20	Amount still owing on stipulated settlement balance pursuant to stipulated settlement ¶ 9.a.	\$62,198.38
21	Current unpaid contribution balance owing pursuant to stipulated settlement ¶ 9.a.	67,861.72
22		
23	Additional interest at 12% per annum owing pursuant to stipulated settlement ¶ 9.a.	15,832.45
24	Liquidated damages at 15% on unpaid contribution balance owing pursuant to stipulated settlement ¶ 9.a.	78,528.96
25	Attorney’s fees (5/01/10 – 10/28/11) incurred and owing pursuant to stipulated settlement ¶ 9.d	4,462.00
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27	Costs pursuant to stipulated settlement ¶ 9.d	<u>\$138.06</u>
28		TOTAL: <u><u>\$229,021.57</u></u>

1 Dkt. No. 42 at 5.

2 Upon review of Plaintiff's request, the Court ordered Defendants to show cause why default
3 judgment should not be entered in Plaintiffs' favor in the amount of \$229,021.57. Dkt. No. 43.

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5 Having received Defendants' response, the Court hereby ORDERS as follows:

- 6 1) The Order to Show Cause is DISCHARGED.
- 7 2) The parties shall meet and confer in person by November 28, 2011, with regards to the
8 proper amounts due. The parties shall thereafter file a status report or stipulation by
9 December 5, 2011.

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11 **IT IS SO ORDERED.**

12 Dated: November 14, 2011

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16 Maria-Elena James
17 Chief United States Magistrate Judge
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