

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GIL CROSTHWAITE, et al.,

No. C-08-0034 MMC

Plaintiffs,

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFFS'
MOTION FOR DEFAULT JUDGMENT**

v.

TERRENCE WAYNE WIMMER, et al.,

Defendants

Before the Court is plaintiffs' Motion for Default Judgment, filed August 19, 2008, which motion plaintiffs, with leave of Court, supplemented on September 24, 2008 and September 25, 2008. No opposition has been filed. Having read and considered the papers filed in support of the motion, the Court rules as follows.

A. Contributions

To the extent the motion seeks an award of \$96,162.46 for contributions due, (see McBride Decl. Ex. G-1; Second Supp. Stafford Decl. Ex. A), the motion is, for the reasons stated by plaintiffs, hereby GRANTED.

B. Liquidated Damages

To the extent the motion seeks an award of \$45,630.37 for liquidated damages, the motion, as set forth below, is hereby GRANTED in part and DENIED in part.

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1 Upon entry of default, the factual allegations in the complaint are deemed admitted.
2 See TeleVideo Systems, Inc. v. Heidenthal, 826 F. 2d 915, 917-18 (9th Cir. 1987). Here,
3 plaintiffs allege defendants have failed to pay contributions corresponding to “work
4 performed” in June 2007 and thereafter, and that defendants have failed to pay liquidated
5 damages “owed for this period.” (See Compl. ¶ 13.) Defendants’ default having been
6 entered by the Clerk on March 4, 2008, defendants have admitted they owe plaintiffs
7 liquidated damages corresponding to work performed in June 2007 and thereafter.
8 Plaintiffs have offered evidence sufficient to establish liquidated damages corresponding to
9 work performed as of June 2007 and thereafter in the amount of \$36,134.17. (See
10 McBride Decl. Ex G-2; Second Supp. Stafford Decl. Ex. B.)

11 As noted, however, plaintiffs seek an award of liquidated damages in the total
12 amount of \$45,630.37. Because such total amount exceeds, by \$9,496.20, the amount of
13 liquidated damages corresponding to work performed beginning June 2007, the Court, by
14 order filed September 15, 2008, afforded plaintiffs an opportunity to file a supplemental
15 memorandum to explain why plaintiffs are entitled to such additional sum. In their
16 supplemental memorandum, plaintiffs assert that because the prayer for relief in the
17 complaint does not contain a limitation as to dates, plaintiffs are entitled to receive
18 liquidated damages corresponding to work performed prior to June 2007. The complaint,
19 however, does not include an allegation that defendants owe liquidated damages for any
20 period prior to June 2007, and, consequently, defendants have not admitted owing
21 liquidated damages for any period prior to June 2007.¹

22 Accordingly, plaintiffs will be awarded liquidated damages in the amount of
23 \$36,134.17.

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26 ¹Further, the only evidence offered by plaintiffs pertaining to liquidated damages for
27 the period prior to June 2007 is that defendants owe \$1,120.02 in liquidated damages
28 corresponding to work performed in 1999; (see McBride Decl. Ex. G-2 at first unnumbered
page); plaintiffs have offered no evidence to support their assertion that defendants owe
any additional amount of liquidated damages for the period prior to June 2007.

1 **C. Interest**

2 To the extent the motion seeks an award of \$9,619.71 in prejudgment interest, the
3 motion, as set forth below, is hereby GRANTED in part and DENIED in part.

4 The complaint alleges that defendants have failed to pay contributions
5 corresponding to work performed for the period beginning June 2007 and have failed to pay
6 interest “owed for this period.” (See Compl. ¶ 13.) Defendants’ default having been
7 entered, defendants have admitted they owe plaintiffs interest corresponding to work
8 performed in June 2007 and thereafter. Plaintiffs have offered evidence sufficient to
9 establish prejudgment interest corresponding to work performed in June 2007 and
10 thereafter in the amount of \$8,811.86. (See McBride Decl. Ex. G-2.)

11 As noted, however, plaintiffs seek an award of prejudgment interest in the total
12 amount of \$9,619.71. Because such total amount exceeds, by \$807.85, the amount of
13 prejudgment interest owed for the period beginning June 2007, the Court afforded plaintiffs
14 an opportunity to file a supplemental memorandum to explain why plaintiffs are entitled to
15 such additional sum. In their supplemental memorandum, plaintiffs assert that because the
16 prayer for relief in the complaint does not contain a limitation as to dates, plaintiffs are
17 entitled to receive prejudgment interest corresponding to work performed prior to June
18 2007. The complaint, however, does not include an allegation that defendants owe
19 prejudgment interest for any period prior to June 2007, and, consequently, defendants
20 have not admitted owing prejudgment interest for any period prior to June 2007.

21 Accordingly, plaintiffs will be awarded prejudgment interest in the amount
22 \$8,811.86.

23 **D. Audit Fees and Costs**

24 To the extent the motion seeks an award of \$7,596.48 for fees and costs incurred by
25 plaintiffs to conduct an audit of defendants’ records, (see Supp. Stafford Decl. Ex. D), the
26 Court finds such fees and costs are reasonable, and, accordingly, hereby GRANTS the
27 motion. (See McBride Decl. Ex. E (Collective Bargaining Agreement § 12.13.02) (providing
28 for payment of “reasonable” auditors’ fees and audit expenses).)

1 **E. Amounts Due As Result of Audit Findings**

2 To the extent the motion seeks an award of \$102,550.70 representing amounts
3 found due to plaintiffs as a result of the June 2008 audit of defendants' records, (see
4 Bradley Decl. Ex. A, first unnumbered page), the motion, for the reasons stated by
5 plaintiffs, is hereby GRANTED.

6 **F. Attorney's Fees and Costs**

7 To the extent the motion seeks an award of \$9,064.00 in attorney's fees and
8 \$838.73 in costs incurred by plaintiffs to file and prosecute the instant action, (see Stafford
9 Decl. ¶ 6; Supp. Stafford Decl. ¶ 6), the Court finds such fees and costs are reasonable,
10 and, accordingly, hereby GRANTS the motion. (See McBride Decl. Ex. E (Collective
11 Bargaining Agreement § 12.13.02) (providing for payment of "reasonable" attorney's fees
12 and expenses incurred in connection with any civil action).)

13 **G. Post-Judgment Interest**

14 To the extent the motion seeks an award of post-judgment interest at a rate of
15 twelve percent per annum, the motion is hereby GRANTED, for the reason the parties have
16 contractually agreed to such rate of interest. (See id. (Collective Bargaining Agreement §
17 12.13.01) (providing employer shall pay interest at "rate of twelve percent (12%) per annum
18 until [amounts owed] are paid")); see Central States, Southeast and Southwest Areas
19 Pension Fund v. Bomar Nat'l, Inc., 253 F. 3d 1011, 1020 (7th Cir. 2001) (holding "[i]t is well
20 established that parties can agree to [a post-judgment] interest rate other than the standard
21 one contained in 28 U.S.C. § 1961").

22 **CONCLUSION**

23 For the reasons stated above, plaintiffs' motion for default judgment is hereby
24 GRANTED in part and DENIED in part, as follows:

25 1. Plaintiffs shall have judgment against defendants in the total amount of
26 \$261,158.40, such amount consisting of \$96,162.46 (contributions), \$36,134.17 (liquidated
27 damages), \$8,811.86 (prejudgment interest), \$7,596.48 (audit fees and costs),
28 \$102,550.70 (amounts found due on audit), \$9,064.00 (attorney's fees), and \$838.73

1 (litigation costs).

2 2. The judgment shall bear interest at the rate of twelve percent per annum.

3 3. To the extent plaintiffs seek further relief, the motion is hereby DENIED.

4 **IT IS SO ORDERED.**

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6 Dated: October 7, 2008

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MAXINE M. CHESNEY
United States District Judge

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