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United States District Court
For the Northern District of California

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

BOARD OF TRUSTEES, in their capacity as Trustees of the Cement Masons Health and Welfare Trust Fund for Northern California, Cement Masons Pension Trust Fund for Northern California, Cement Masons Vacation/Holiday Trust Fund for Northern California, Cement Masons Apprenticeship and Training Trust Fund for Northern California,

Plaintiff,

v.

CHARLES B. HARDING CONSTRUCTION, INC.,

Defendant

No. C 09-2053 MMC

ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION; GRANTING PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT

Before the Court is Magistrate Judge Elizabeth D. Laporte's Report and Recommendation, filed October 6, 2009, by which Magistrate Judge Laporte recommends the Court grant plaintiff's motion for default judgment. No objections to the Report and Recommendation have been filed.

Having reviewed the matter de novo, the Court, for the reasons expressed in the Report and Recommendation, hereby ADOPTS the Report and Recommendation in its entirety.

1 Accordingly, plaintiff's motion for default judgment is hereby GRANTED, as follows:

2 1. Within thirty (30) days of the issuance of this order, defendant shall submit to an
3 audit by auditors selected by plaintiff Board of Trustees for the trust funds identified in the
4 complaint ("Trust Funds"), covering the time period beginning February 1, 2006 to the date
5 of this order, at the premises of defendant, or the location where the records are kept,
6 during business hours at a reasonable time or times, and shall allow said auditors to
7 examine and copy such books, records, papers, and reports of defendant relevant to the
8 enforcement of the collective bargaining agreement and/or the Trust Funds' Agreements,
9 including but not limited to the following: individual earning records (compensation); W-2
10 Forms; 1096 and 1099 Forms; reporting forms for all Trust Funds; State DE-3 tax reports;
11 workers compensation insurance reports; employee time cards; payroll journals; quarterly
12 payroll tax returns (Form 941); check registers and supporting cash vouchers; Form 1120-
13 1040 or partnership tax returns; and the portions of any general ledger relating to payroll
14 audits.

15 2. Plaintiff is awarded attorney's fees in the amount of \$5900 and costs in the
16 amount of \$710.97.

17 3. Pursuant to plaintiff's prayer for certain types of relief in amounts to be
18 determined according to proof, plaintiff may file, no later than six (6) months from the date
19 of this order, a declaration in which plaintiff includes the following:


- 20 a. an itemization and calculation of any claim by plaintiff for unpaid
21 contributions;
- 22 b. an itemization and calculation of, as well as the factual basis for, any claim
23 by plaintiff for liquidated damages and for interest thereon;
- 24 c. an itemization and calculation of any other amount and type of relief
25 authorized by agreement; and
- 26 d. specification of any provision in an agreement that authorizes the
27 requested relief, including but not limited to liquidated damages and interest thereon, and
28 attaching thereto as an exhibit the relevant portions of the agreement(s).

1 4. The Court shall retain jurisdiction over the instant action for purposes of enforcing
2 the instant order and amending the judgment to include, following the audit, additional
3 sums determined by the Court to be due and owing.

4 The Clerk shall enter judgment in favor of plaintiff and against defendant in
5 accordance with the instant order.

6 **IT IS SO ORDERED.**

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8 Dated: December 29, 2009


MAXINE M. CHESNEY
United States District Judge

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