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 8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA

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 11 BOARD OF TRUSTEES OF THE BAY AREA) NO. C 04 3098 MJJ
 ROOFERS, et al.,)
 12)
 Plaintiffs,) NOTICE OF MOTION AND
 13) MOTION FOR DEFAULT
 vs.) JUDGMENT AND ATTORNEYS
 14) FEES; POINTS AND
 ACE ROOFING COMPANY, etc.,) AUTHORITIES IN
 15) SUPPORT THEREOF
 Defendant.) [F.R.C.P. 55 (B)(2)]
 16) Date: May 10, 2005
) Time: 9:30 a.m.

17 TO DEFENDANT:

18 PLEASE TAKE NOTICE that on Tuesday, May 10, 2005 at 9:30
 19 a.m., or as soon thereafter as counsel may be heard, before the
 20 Honorable Martin J. Jenkins, Judge of the United States District
 21 Court, Northern District of California, 450 Golden Gate Avenue,
 22 Courtroom 11, 19th Floor, San Francisco, California, plaintiffs, BOARD
 23 OF TRUSTEES OF THE BAY AREA ROOFERS HEALTH & WELFARE TRUST FUND,
 24 PACIFIC COAST ROOFERS PENSION PLAN, EAST BAY/NORTH BAY ROOFERS
 25 VACATION TRUST FUND, BAY AREA COUNTIES ROOFING INDUSTRY PROMOTION
 26 FUND, BAY AREA COUNTIES ROOFING INDUSTRY APPRENTICESHIP TRAINING FUND;
 27 BRUCE LAU, TRUSTEE, will and does move this Court, pursuant to Rule
 28 55(b)(2) of the Federal Rules of Civil Procedure, to enter a default

1 judgment and award plaintiffs unpaid and owing trust fund
2 contributions, liquidated damages, interest, attorneys fees and court
3 costs.

4 This motion is made on the grounds that defendant has failed
5 to appear herein after valid service, the default of defendant was
6 entered by this Court on September 30, 2004, and there are no triable
7 issues of fact or disputes at law. Defendant has a contractual
8 obligation to pay contributions to the BAY AREA ROOFERS HEALTH &
9 WELFARE TRUST FUND, PACIFIC COAST ROOFERS PENSION PLAN, EAST BAY/NORTH
10 BAY ROOFERS VACATION TRUST FUND, BAY AREA COUNTIES ROOFING INDUSTRY
11 PROMOTION FUND, BAY AREA COUNTIES ROOFING INDUSTRY APPRENTICESHIP
12 TRAINING FUND and has failed to properly pay on behalf of covered
13 employees in a timely manner. This motion is based upon this Notice,
14 the Memorandum of Points and Authorities in Support of Motion for
15 Default Judgment, the Declarations of Sandy Stephenson and Michael J.
16 Carroll in Support of Motion for Default Judgment filed herewith, and
17 such further oral or documentary evidence as may be presented at the
18 hearing of this motion.

19 DATED: April 5, 2005

20 ERSKINE & TULLEY

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22 By: /s/ Michael J. Carroll
23 Michael J. Carroll
24 Attorneys for Plaintiffs

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25 MEMORANDUM OF POINTS AND AUTHORITIES

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26 I.
27 INTRODUCTION

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27 In this ERISA collection action plaintiffs, BOARD OF
28 TRUSTEES OF THE BAY AREA ROOFERS HEALTH & WELFARE TRUST FUND, PACIFIC

1 COAST ROOFERS PENSION PLAN, EAST BAY/NORTH BAY ROOFERS VACATION TRUST
2 FUND, BAY AREA COUNTIES ROOFING INDUSTRY PROMOTION FUND, BAY AREA
3 COUNTIES ROOFING INDUSTRY APPRENTICESHIP TRAINING FUND; BRUCE LAU,
4 TRUSTEE, seek to recover employee benefit contributions, liquidated
5 damages and interest for the months of January through December 2004.
6 The total amount due is \$111,604.96. Defendant, ACE ROOFING COMPANY,
7 a California corporation, is an employer which is currently delinquent
8 in its fringe benefit contribution obligations.

9 Under the terms of the Trust Agreements a contribution is
10 due on the 10th day of the month immediately following the month for
11 which the contribution is required, Exhibit 3, Article III, Paragraph
12 B, and is delinquent if not received by the 15th day of the month in
13 which the Due Date falls, Article III, Paragraph C.

14 The complete list of delinquent months and amounts is set
15 forth in Exhibit 4 to the Stephenson Declaration. Obviously the amount
16 may change by the date of the hearing if defendant either makes
17 further payments or falls further behind. Plaintiffs will update this
18 information by a supplemental declaration if a change in the amount
19 due occurs. The amounts due have been computed based on the monthly
20 reporting forms filled out by defendant and submitted to the Trust
21 Funds without payment.

22 Under the terms of the Trust Agreement of the Bay Area
23 Roofers Health and Welfare Trust Fund to which defendant is
24 specifically bound by its contract, failure to make timely payment
25 results in the following consequences:

- 26 A. Liquidated damages
27 1) 2% of the delinquent contributions if
28 received between the 15th of the month in
which the Due Date falls and the 1st of the
following month;
2) 6% of the delinquent contributions if

1 received after the 1st of the month following
2 the Due Date but before the 10th of the month
following the Due Date;

3 3) 10% of the delinquent contributions if
4 received after the 10th of the month following
the Due Date;

5 4) 20% of the delinquent contributions if
6 received after the delinquent contributions
are referred to an attorney for collection,
with a minimum of \$100;

7 Exhibit 3, Amendment Number Two, (2)(a)(i)(ii)
(iii)(iv)

8 B. Interest at the rates prescribed from time
to time pursuant to the Underpayment Rate of
Internal Revenue Code Section 6621..., Exhibit
3, Article III, Para. C(3), page 8

9 C. Attorneys fees, Exhibit 3, Article III,
10 Para. E., pages 11-12

11 The other trust agreements contain the same language.

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13 II.
FACTUAL BACKGROUND

14 Defendant has entered into a collective bargaining
15 agreement with Roofers Local Union No. 40, which requires that
16 contributions be paid on behalf of covered employees to the BAY
17 AREA ROOFERS HEALTH & WELFARE TRUST FUND, PACIFIC COAST ROOFERS
18 PENSION PLAN, EAST BAY/NORTH BAY ROOFERS VACATION TRUST FUND, BAY
19 AREA COUNTIES ROOFING INDUSTRY PROMOTION FUND, BAY AREA COUNTIES
20 ROOFING INDUSTRY APPRENTICESHIP TRAINING FUND. See Exhibit 1 to
21 the Stephenson Declaration, the Individual Employer Agreement which
22 binds defendant to the Working Agreement, Exhibit 2 to the
23 Stephenson Declaration, which at Articles XVIII, XIX, XX, XXI and
24 XXII bind defendant to each of the Agreements and Declarations of
25 Trust of each trust fund of plaintiff. See Exhibit 3 to the
26 Stephenson Declaration, the Trust Agreement of the Bay Area Roofers
27 Health and Welfare Trust Fund.

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III.
SEPARATE STATEMENT OF UNDISPUTED FACTS

Every essential allegation of the complaint is proved by
the affidavits submitted herewith:

<u>COMPLAINT PARAGRAPH</u>	<u>COMPLAINT ALLEGATIONS</u>	<u>PROOF OF ALLEGATION</u>
1	Jurisdiction	Carroll Decl.; 29 U.S.C. Sec. 1132, 1145; 29 U.S.C. Sec. 185 (a)
2	Status of Plaintiff	Carroll Decl. et seq.
3	Jurisdiction over defendant	Carroll Decl.
5	Defendant bound by contract to pay contributions	Stephenson Decl.
6, 7, 8, 10	Defendant has failed to pay contributions in a timely manner	Stephenson Decl.
9	Demand has been made upon defendant	Carroll Decl.
12	Contract documents provide for attorneys' fees	Exhibit 3

IV.
ARGUMENT

A. PLAINTIFFS ARE ENTITLED TO RECOVER LIQUIDATED DAMAGES, INTEREST
AND ATTORNEYS FEES AS A MATTER OF LAW

An award of liquidated damages, interest and attorneys'
fees is mandatory under 29 U.S.C. § 1132(g).

Liquidated damages are calculated at 20% of the
contribution amount due pursuant to the Trust Agreement, Exhibit 3.

Interest is allowed and has been computed based on the
rates charged by the Internal Revenue Service pursuant to Section
6621 of the Code. The Stephenson Declaration sets forth the bases

1 for calculating interest and liquidated damages through May 10,
2 2005 and a detail sheet summarizing the amounts due is attached as
3 Exhibit 4 to her declaration and is incorporated herein.

4 The trust agreement, Exhibit 3, Article III, Section E,
5 page 11, provides for attorneys fees and court costs. The Carroll
6 Declaration details the fees and costs incurred in this action.

7 CONCLUSION

8 It is respectfully submitted that plaintiffs are entitled
9 to default judgment according to proof.

10 Dated: April 5, 2005

11 ERSKINE & TULLEY

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13 By: /s/ Michael J. Carroll
14 Michael J. Carroll
15 Attorneys for Plaintiffs
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