

United States District Court  
For the Northern District of California

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\*E-Filed 08/30/2010\*

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

BOARD OF TRUSTEES OF THE SHEET  
METAL WORKERS HEALTH CARE  
PLAN OF NORTHERN CALIFORNIA,  
SHEET METAL WORKERS PENSION  
TRUST OF NORTHERN CALIFORNIA,  
SHEET METAL WORKERS LOCAL 104  
VACATION, HOLIDAY SAVINGS PLAN,  
and BRUCE WORD as Trustee,

No. C 09-05944 RS

**ORDER RE: PLAINTIFFS' MOTION  
FOR DEFAULT JUDGMENT**

Plaintiffs,

v.

KYM MECHANICAL, a California  
corporation, formerly doing business as  
JAYCO MECHANICAL,

Defendant.

I. INTRODUCTION

Plaintiffs are the Board of Trustees of the Sheet Metal Workers Health Care Plan of Northern California, Sheet Metal Workers Pension Trust of Northern California, Sheet Metal Workers Local 104 Vacation, Holiday Savings Plan, and Bruce Word as Trustee. On June 15, 2010

No. C 09-05944 RS  
ORDER

1 this Court denied without prejudice the plaintiffs’ motion for default judgment, citing several  
2 deficiencies in their presentation. Plaintiffs now renew their motion, pursuant to contract law and  
3 section 1132 of the Employee Retirement Income Security Act of 1974. *See* 29 U.S.C. §  
4 1132(g)(2). Because supplemental information is necessary for proper consideration of plaintiffs’  
5 renewed motion, the motion hearing scheduled for September 2, 2010 at 1:30 p.m. is continued to  
6 **September 23, 2010**. Plaintiffs shall submit the requested information on or before September 16,  
7 2010.

## 8 II. DISCUSSION

9 On July 1, 2006, Kym Mechanical entered into a Standard Form Union Agreement with the  
10 Sheet Metal Workers’ International Association, Local Union No. 104, and the Bay Area  
11 Association of SMACNA Chapters, which provided that Kym would periodically contribute funds  
12 based on the number of Union employee hours worked. As plaintiffs explain, the Savings Plan’s  
13 administrators sent to Kym a preprinted form each month. This form listed all known employees  
14 and the applicable “fringe benefit contribution rates.” Kym was to complete and return the reporting  
15 form and timely pay any owed contributions. Under the Agreement, Kym had until the tenth day of  
16 the month after the work was completed to make its payments. Payments made after the *twentieth*  
17 day were termed “delinquent.” Late payment subjected Kym to liability for liquidated damages,  
18 interest, and any attorneys’ fees and costs directed toward recovery of missed or delinquent  
19 payments. In their renewed motion, plaintiffs explain that the contract also provided that it “shall  
20 continue in force and effect from year to year thereafter unless written notice of re-opening is  
21 given.” They assert that defendants never supplied written notice of any kind and, accordingly,  
22 insist the contract has remained in effect since 2006.

23 Apparently, a dispute arose when Kym Mechanical made a delinquent payment for work  
24 completed in September of 2009. Plaintiffs allege that when they sought liquidated damages for  
25 that delinquent payment, Kym stopped submitting both the self-reporting forms or its monthly  
26 contributions. Specifically, plaintiffs explained in their original motion for default judgment that  
27 they sought either missed contributions, liquidated damages, or interest (or all of the above) for the

1 months of September, 2009 through March, 2010 for Employer No. 381510 (the renewed motion  
2 adds the months of April and May of 2010). They also sought missed contributions for the months  
3 of September 2009 through January 2010 for Employer Nos. 381505 and 381520 (the renewed  
4 motion adds the months of February through May of 2010 for the former, and February and March  
5 of 2010 for the latter).

6 A declaration filed with the original motion indicated that, for the time periods stated in the  
7 Complaint, Kym’s underpayments totaled \$25,010.64. After accounting for interest, liquidated  
8 damages, fees, and costs, this number climbed to \$42,284.53. In their renewed motion, plaintiffs  
9 clarify that Kym Mechanical disbursed \$35,543.66 between the issuance of the June 16 Order and  
10 the filing of plaintiffs’ motion. They aver that this sum represents *only* the outstanding  
11 contributions owed to the Trust and does not include liquidated damages, interest, attorneys’ fees, or  
12 costs. They assert that Kym Mechanical still owes \$20,693.18 in liquidated damages, \$3,490.96 in  
13 interest (purportedly calculated at a rate of fifteen percent), and \$425 in costs. They suggest  
14 attorneys’ fees should be determined by this Court. The plaintiffs do not detail the number of  
15 attorney hours expended or the hourly rate at which plaintiffs’ attorneys were retained.

16 There are several problems apparent from the face of the documents submitted to support  
17 these estimates. In their motion, plaintiffs explain that liquidated damages should be assessed at  
18 twenty percent of the outstanding contribution, as provided for in the Trust Agreement. All  
19 calculations they supply contemplate liquidated damages assessed at this rate. The relevant section  
20 of the Agreement, however, instructs that the correct percentage is actually *ten* percent. In a  
21 declaration that accompanied the original motion, plaintiff witness Maraia also notes that liquidated  
22 damages should be assessed at the ten percent rate. A memorandum sent from the Sheet Metal  
23 Workers of Northern California Pension Plan perhaps explains the discrepancy. It is addressed to  
24 “all contributing employers,” and clarifies that “[o]nce a matter is referred to Collection Counsel,  
25 liquidated damages increase as of the date of referral to twenty percent of the total amount of any  
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1 billing still due and owing as of that date.” Plaintiffs must make clear when the matter was referred  
2 to “Collection Counsel” and adjust their calculations accordingly.<sup>1</sup>

3 As to the interest rate, plaintiffs’ renewed moving papers do not detail the rate employed. In  
4 their original filing, they suggested interest would be assessed “at rates determined by formula,  
5 Exhibit 2, Item III, Section C, page 9.” This appears to be a reference to the Standard Form  
6 Agreement. The section cited to, however, discusses a “vacation-holiday-savings plan.” In the table  
7 of calculations included in plaintiffs’ renewed motion, the interest heading states that interest was  
8 levied at a rate of fifteen percent. That said, plaintiffs also submit a letter sent by plaintiffs’ attorney  
9 to Kym Mechanical in November of 2009. This letter states that interest will be calculated at a rate  
10 of ten percent. An “Important Reminder” memorandum sent from the Sheet Metal Workers’ Local  
11 104 to “all contributing employers” in February of 2010 also discusses the ten percent figure.  
12 Plaintiffs must explain and defend the interest rate adopted.

13 Finally, plaintiffs seek attorneys’ fees in an amount to be determined by the Court. In their  
14 original motion, plaintiffs’ requested fees through June 17, 2010, totaling \$740.00. It would be  
15 helpful to include the hourly rate and an estimate of attorney hours worked.

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17 IT IS SO ORDERED.

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19 Dated: 08/30/2010



20 RICHARD SEEBORG  
21 UNITED STATES DISTRICT JUDGE

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27 <sup>1</sup> It appears from the record that the matter was referred to Collection Counsel by at least November  
28 of 2009, which would appear to mean that liquidated damages for the months of September and  
October of 2009 should be assessed at the ten percent rate.