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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BOARD OF TRUSTEES OF THE SHEET
METAL WORKERS HEALTH CARE PLAN
OF NORTHERN CALIFORNIA, *et al.*,

No. C-10-2212 EMC

Plaintiffs,

**ORDER RE SUPPLEMENTAL
BRIEFING AND/OR EVIDENCE**

v.

SUPERHALL MECHANICAL, INC.,

Defendant.

Plaintiffs have moved for default judgment. Having reviewed the papers submitted, the Court hereby orders that Plaintiffs provide supplemental briefing and/or evidence to address the following issues.

(1) It is not clear from Plaintiffs' papers whether the relevant Trust Agreements all have the same *liquidated damages* provision. *See* Carroll Decl. ¶ 6 (stating that the provision for court costs and attorney fees contained in the Pension Trust Agreement is also contained in the other Trust Agreements; no express reference to liquidated damages).

(2) In his declaration, Mr. Carroll states that he "was present at the September 22, 1989 and the December 15, 2009 Sheet Metal Workers Board Meeting when the trustees adopted liquidated damages at the 20% rate and interest at the 10% rate." Carroll Decl. ¶ 8. It is not clear whether the trustees adopted these rates for *all* of the trust funds at issue.

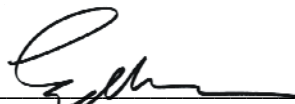
(3) In the complaint, Plaintiffs allege that Defendant owes contributions, interest, liquidated damages, and attorney's fees based on a collective bargaining agreement ("CBA") entered

1 into with Sheet Metal Workers Local Union No. 104. *See* Compl. ¶ 5. However, Plaintiff appear to
2 seek in their motion for default judgment not only money owed pursuant to the CBA, *see* Van
3 Buskirk Decl., Ex. 1 (CBA), but also money owed pursuant to a Subscription Agreement. *See id.*,
4 Ex. 2 (Subscription Agreement). Thus, arguably, there is an issue as to whether Plaintiffs are
5 seeking damages beyond those put at issue in the complaint. In this regard, the Court notes that the
6 CBA does not appear to cover one of the Trust Funds at issue (*i.e.*, the Sheet Metal Workers Health
7 Care Plan of Northern California) that the Subscription Agreement does.¹

8 Plaintiffs shall file *and* serve supplemental briefing and/or evidence to address the above
9 issues by June 1, 2011. In addition, the Court orders Plaintiffs to serve a copy of this order on
10 Defendant. Proofs of service shall be promptly filed in both instances.

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12 IT IS SO ORDERED.

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14 Dated: May 25, 2011

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17 EDWARD M. CHEN
18 United States District Judge

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27 _____
28 ¹ It appears that there is a difference between the Sheet Metal Workers Health Care Plan of
Northern California (Subscription Agreement) and the Sheet Metal Workers Local 104 Health Care
Plan (CBA).