

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

F.G. CROSTHWAITE and RUSSELL E.
BURNS, in their respective capacities as
Trustees, et al.,

No. C 10-4342 SI

**ORDER GRANTING PLAINTIFFS’
MOTION FOR SUMMARY JUDGMENT**

Plaintiffs,

v.

A PLUS MATERIALS AND RECYCLING,
INC., a California Corporation; and RODNEY
RAY LAWLEY, an individual,

Defendants.

Plaintiffs’ motion for summary judgment, filed by F.G. CROSTHWAITE and RUSSELL E. BURNS, in their respective capacities as Trustees, of the OPERATING ENGINEERS’ HEALTH AND WELFARE TRUST FUND FOR NORTHERN CALIFORNIA; PENSIONED OPERATING ENGINEERS’ HEALTH AND WELFARE TRUST FUND; PENSION TRUST FUND FOR OPERATING ENGINEERS; OPERATING ENGINEERS’ VACATION AND HOLIDAY PAY PLAN; OPERATING ENGINEERS AND PARTICIPATING EMPLOYERS PRE-APPRENTICE, APPRENTICE, AND JOURNEYMAN AFFIRMATIVE ACTION TRAINING FUND; HEAVY AND HIGHWAY COMMITTEE; and OPERATING ENGINEERS LOCAL 3, was scheduled for hearing on November 18, 2011. No opposition to that motion was filed. On November 17, 2011, after the Court contacted the parties, John McKinley, as counsel for defendants, emailed the Court to state that he intended to file an opposition and requested to continue the hearing date. His request was granted, and the hearing was continued to December 16, 2011; defendants’ opposition was due by November 28, 2011.

As of December 15, 2011, defendants have failed to file any opposition to plaintiffs’ motion for

1 summary judgment. On November 29, 2011, plaintiff filed a request for entry of summary judgment
2 without hearing.

3 The Court has reviewed plaintiffs' motion for summary judgment, as well as its supporting
4 declarations. Having reviewed the papers, and for good cause shown, the Court GRANTS plaintiffs'
5 motions for summary judgment, Doc. 33, and GRANTS its request for entry of summary judgment
6 without hearing. Doc. 41. The hearing scheduled for December 16, 2011 is hereby VACATED.

7 Plaintiffs shall recover the following from Defendants:

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Contributions	24,624.82
Liquidated Damages	8,205.61
Interest (through 7/31/11)	3,616.98
Attorneys' Fees (5/10/10 through 8/22/11)	13,005.50
Costs (Complaint Filing Fee, \$350; Service of Process, \$448)	798.00
Attorneys' fees (Estimated in connection with the preparation for and attendance at hearing of this Motion)	780.00
Grand Total	\$51,030.91

Contributions totaling \$24,624.82 shall continue to accrue 5% per annum interest from August 1, 2011, to date of satisfaction of Judgment, in accordance to the Collective Bargaining Agreement and Trust Agreements, and post judgment interest shall accrue on the remaining amounts due for liquidated damages, and attorneys' fees and costs totaling \$22,789.11.

It is further ORDERED that Defendants submit contribution reports and payment of contributions owed, if any, for the months of July 2011 through the time of judgment for all of its accounts, and from March through June 2010 for account numbers 221-95 and 220-24 only, and 20% liquidated damages, and 10% per annum interest on contributions until paid.

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It is further ORDERED that Defendants shall promptly submit to an audit of its records should Plaintiffs request one, by scheduling an appointment with Plaintiffs' auditor, in accordance with the auditors' availability; and by providing the necessary documents and allowing the auditor access to them on or before the scheduled date. Should the audit determine that amounts are owed, Plaintiffs' shall be entitled to judgment thereon, including audit fees, according to proof.

Docs. 33 and 41.

IT IS SO ORDERED.

Dated: December 15, 2011



SUSAN ILLSTON
United States District Judge

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