

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

BOARD OF TRUSTEES OF THE BAY
AREA ROOFERS HEALTH & WELFARE
TRUST FUND, PACIFIC COAST
ROOFERS PENSION PLAN, EAST
BAY/NORTH BAY ROOFERS
VACATION TRUST FUND, BAY AREA
COUNTIES ROOFING INDUSTRY
PROMOTION FUND, BAY AREA
COUNTIES ROOFING INDUSTRY
APPRENTICESHIP TRAINING FUND;
BRUCE LAU, TRUSTEE,

Plaintiff,

v.

NORTH BAY WATERPROOFING, INC., a
California corporation;

Defendant.

Case No. 12-cv-02374 NC

**ORDER RE: HEARING ON MOTION
FOR DEFAULT JUDGMENT**

Re: Dkt. No. 26

Pending before the Court is plaintiffs' motion for default judgment against North Bay Waterproofing, Inc. seeking an order compelling North Bay to comply with an audit of its payroll records for the period of April 1, 2011 to the present. Dkt. No. 26. A hearing on the motion is scheduled for July 31, 2013 at 1:00 p.m. in Courtroom A, 15th Floor, U.S. District Court, 450 Golden Gate Avenue, San Francisco, California.

The Court notes that plaintiffs' complaint alleges North Bay breached a collective

Case No. 12-cv-02374 NC
ORDER RE: HEARING ON MOTION
FOR DEFAULT JUDGMENT

1 bargaining agreement with Local 40 of the United Union of Roofers, Waterproofers and
2 Allied Workers by refusing to permit an audit. Dkt. No. 1 at 3. Plaintiffs' motion,
3 however, seeks relief with respect to the alleged breach of the agreement with Local 40, and
4 with respect to a breach of an additional collective bargaining agreement with Local 81 of
5 the United Union of Roofers, Waterproofers and Allied Workers. *See* Dkt. No. 26 at 3-4.
6 At the hearing, plaintiffs should be prepared to address (1) why the Court should grant relief
7 with respect to the collective bargaining agreement with Local 81 which has not been
8 alleged in the complaint, *see* Fed. R. Civ. P. 54(c) (“[a] default judgment must not differ in
9 kind from, or exceed in amount, what is demanded in the pleadings”); *see also, e.g., Bob*
10 *Tragni, et al. v. Souther Electric Inc.*, No. 09-cv-32 JF (RS), 2009 WL 3052635, *2-3 (N.D.
11 Cal. Sept. 22, 2009) (denying default judgment with respect to relief not alleged in the
12 complaint); and (2) why North Bay should be required to submit to an audit covering the
13 time period of April 1, 2011 through the present where the collective bargaining agreements
14 provided appear to have an effective date of August 1, 2011. *See* Dkt. No. 26-3 ¶¶ 2, 4.

15 The plaintiffs must serve North Bay with this order in a manner to ensure notice.

16 IT IS SO ORDERED.

17 Date: July 26, 2013

18 
19 _____
20 Nathanael M. Cousins
21 United States Magistrate Judge
22
23
24
25
26
27
28