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13 Attorneys for Plaintiffs

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA

16 THE BOARD OF TRUSTEES, in their
17 capacities as Trustees of the LABORERS
18 HEALTH AND WELFARE TRUST FUND
19 FOR NORTHERN CALIFORNIA;
20 LABORERS VACATION-HOLIDAY TRUST
21 FUND FOR NORTHERN CALIFORNIA;
22 LABORERS PENSION TRUST FUND FOR
23 NORTHERN CALIFORNIA; and LABORERS
24 TRAINING AND RETRAINING TRUST
25 FUND FOR NORTHERN CALIFORNIA,

26 Plaintiffs,

27 v.

28 TKDEMO AND CONCRETE CUTTING,
INC., a California Corporation; TKDEMO
AND CONCRETE CUTTING, INC., a
California Corporation doing business as T K
ENGINEERING; TKDEMO AND
CONCRETE CUTTING, INC., a California
Corporation doing business as T K DEMO
AND CONCRETE CUTTING, INC. doing
business as T K ENGINEERING; and
TIMOTHY BRIAN KRUSE, individually,

Defendants.

No. C 15-01366 WHO

**ORDER GRANTING PLAINTIFFS'
MOTION FOR ENTRY OF DEFAULT
JUDGMENT BY COURT**

Date: November 18, 2015
Time: 2:00 p.m.
Dept.: Courtroom 2, 17th Floor
Judge: Hon. William H. Orrick

1 This matter was set for hearing for entry of Judgment by Default against Defendants
2 TKDEMO AND CONCRETE CUTTING, INC.; TKDEMO AND CONCRETE CUTTING, INC.
3 doing business as T K ENGINEERING; TKDEMO AND CONCRETE CUTTING, INC. doing
4 business as T K DEMO AND CONCRETE CUTTING, INC. doing business as T K
5 ENGINEERING (collectively referred to as “TKDEMO AND CONCRETE CUTTING, INC.”)
6 and Defendant TIMOTHY BRIAN KRUSE on November 18, 2015 at 2:00 p.m. in Courtroom 2,
7 17th Floor, 450 Golden Gate Avenue, San Francisco, California. Plaintiffs are The Board of
8 Trustees, in their capacities as Trustees of LABORERS HEALTH AND WELFARE TRUST
9 FUND FOR NORTHERN CALIFORNIA; LABORERS VACATION-HOLIDAY TRUST
10 FUND FOR NORTHERN CALIFORNIA; LABORERS PENSION TRUST FUND FOR
11 NORTHERN CALIFORNIA; AND LABORERS TRAINING AND RETRAINING TRUST
12 FUND FOR NORTHERN CALIFORNIA (hereinafter “Trust Funds” or “Plaintiffs”). Having
13 considered the pleadings and arguments in this matter, the hearing set for November 18, 2015 is
14 VACATED, and good cause appearing, this Court **FINDS AS FOLLOWS:**

- 15 1. The Complaint was filed with this Court on March 24, 2015:
- 16 2. The Complaint was served on Defendants, and each of them, on April 1, 2015, for
17 which proofs of service were filed before this Court with the Summons on April 13, 2015;
- 18 3. No answer or other responsive pleadings having been filed within the time
19 permitted by law and default was entered against the Defendants on April 29, 2015;
- 20 4. On June 21, 1990, TIMOTHY BRIAN KRUSE executed a Memorandum of
21 Agreement on behalf of Kruse Construction (hereinafter “Memorandum Agreement”) with the
22 Union, which incorporated by reference the AGC/ Laborers Master Agreement. TIMOTHY
23 BRIAN KRUSE incorporated TIM KRUSE CONSTRUCTION, INC. after executing the
24 Memorandum Agreement and assumed its terms adhering to its terms, including making
25 contributions to the Trust for work performed by employees of TIM KRUSE CONSTRUCTION,
26 INC. The Master Agreement by its terms incorporates the various Trust Agreements establishing
27 each of the Trust Funds. Hereinafter, the Master Agreement, Memorandum Agreement, and
28 Trust Agreements are referred to collectively as the “Agreements.” Pursuant to the Agreements,

1 TIM KRUSE CONSTRUCTION, INC. is required to contribute and pay to Plaintiffs the hourly
2 amounts required by said Agreements for each hour paid for or worked by any of its employees
3 who performed any work covered by said Agreements, and that it would be subject to and bound
4 by all of the terms, provisions and conditions of the Trust Agreements as incorporated by the
5 terms of the Master Agreement.

6 5. TIM KRUSE CONSTRUCTION, INC. failed to pay contributions in the amount
7 of \$39,279.80 that were revealed as owed to the Trust Funds for work performed by its
8 employees during the time period of February 2009 through June 2012, and related liquidated
9 damages and interest. TIM KRUSE CONSTRUCTION, INC. also timely failed to pay
10 contributions owed based upon work performed by its employees between August 2010 and
11 December 2011 for which it owes the Trust Funds entitled to \$4,132.61 in liquidated damages and
12 interest. Furthermore, TIM KRUSE CONSTRUCTION, INC. failed to pay the Trust Funds
13 unpaid contributions of \$126,547.76 and interest and liquidated damages of \$14,000.55 for the
14 period of January 2012 through April 2013. The Trust Funds filed a Complaint in this Court in
15 Case Number CV-12-05322 JSW seeking collection of such sum and its attorneys' fees and costs.
16 This Court entered a judgment in favor of the Trust Funds and against TIM KRUSE
17 CONSTRUCTION, INC. in the amount of \$212,183.47 on October 2, 2013 (hereinafter
18 "Judgment"). TIM KRUSE CONSTRUCTION, INC. also failed to pay contributions in the
19 amount of \$6,913.62 for the month of May of 2013 which were reported to the Trust Funds as
20 owed, but not paid. This amount was not included in the Judgment.

21 6. TIM KRUSE CONSTRUCTION, INC. did not satisfy the Judgment. On
22 November 26, 2013, TIMOTHY BRIAN KRUSE incorporated TKDEMO AND CONCRETE
23 CUTTING, INC. in order to evade the obligations under the collective bargaining agreement.
24 The Trust Funds levied against TIM KRUSE CONSTRUCTION, INC.'s bank account and
25 obtained a payment toward the judgment in the amount of \$25,239.30. The Trust Funds also
26 levied a writ of execution on Tricorp, a contractor for whom TIM KRUSE CONSTRUCTION,
27 INC. performed work as a subcontractor and thus owed moneys to TIM KRUSE
28

1 CONSTRUCTION, INC. The Trust Funds obtained payments from such levy toward the
2 judgment in the total amount of \$36,030.00.

3 7. TKDEMO AND CONCRETE CUTTING and TIM KRUSE CONSTRUCTION,
4 INC., operate the same type of business, i.e., a contracting business at the same location and both
5 use the same mailing address. TIM KRUSE CONSTRUCTION, INC. and TKDEMO AND
6 CONCRETE CUTTING, INC. perform the same services and labor for the same clients in the
7 same geographic area, and work orders not completed by TIM KRUSE CONSTRUCTION, INC.
8 prior to its termination were completed by TKDEMO AND CONCRETE CUTTING, INC.
9 TIMOTHY BRIAN KRUSE was the RMO/CEO/ Owner of TIM KRUSE CONSTRUCTION,
10 INC. and he is the RMO/CEO/ Owner of TKDEMO AND CONCRETE CUTTING, INC.
11 Substantially all of TKDEMO AND CONCRETE CUTTING, INC.'s equipment and machinery
12 is the same equipment and machinery used by TIM KRUSE CONSTRUCTION, INC., and
13 TKDEMO AND CONCRETE CUTTING, INC. did not pay TIM KRUSE CONSTRUCTION,
14 INC. fair market value for the acquisition and use of this equipment and machinery. The sole
15 person with control over Defendants' bank accounts, TIMOTHY BRIAN KRUSE, is the same
16 person who controlled TIM KRUSE CONSTRUCTION, INC.'S bank accounts. TKDEMO AND
17 CONCRETE CUTTING, INC. was incorporated immediately after judgment was entered against
18 TIM KRUSE CONSTRUCTION, INC. TKDEMO AND CONCRETE CUTTING, INC. took
19 over the operations of TIM KRUSE CONSTRUCTION, INC. after TIM KRUSE
20 CONSTRUCTION, INC.'s California Contractor's license was suspended for failure to pay the
21 Judgment. Accordingly, The Trust Funds have shown that two firms have the same common
22 ownership, management, operations, and labor relations. Additionally, Plaintiffs have also
23 established that TKDEMO AND CONCRETE, INC. is used in a sham effort to avoid collective
24 bargaining obligations.

25 8. After TIMOTHY BRIAN KRUSE filed a Chapter 13 Bankruptcy petition, he
26 began conducting business under the name TKDEMO AND CONCRETE CUTTING using TIM
27 KRUSE CONSTRUCTION, INC.' equipment to finish contracts bid by TIM KRUSE
28 CONSTRUCTION, INC. without satisfying the judgment debt owed to the Trust Funds and

1 without regard to the Trust Funds' lien rights in both his personal and real property. He operates
2 his new business out of the real property owned by TIM KRUSE CONSTRUCTION, INC.
3 paying the mortgage personally or from the income of the TKDEMO AND CONCRETE
4 CUTTING, INC. since he concedes that TIM KRUSE CONSTRUCTION, INC. is out of
5 business. His actions within the bankruptcy Court, including scheduling TIM KRUSE
6 CONSTRUCTION, INC.'s assets as his own free of the Trust Funds' secured claim and not
7 revealing his interest in TKDEMO AND CONCRETE CUTTING, INC. in his initial bankruptcy
8 schedules, evidence his fraudulent intention to retain the property of TIM KRUSE
9 CONSTRUCTION, INC. for his own benefit and depletion at the expense of the Trust Funds.
10 Moreover, TIM BRIAN KRUSE admits that he incorporated TKDEMO AND CONCRETE
11 CUTTING, INC. because his license was suspended for nonpayment of the Judgment obtained by
12 the Trust Funds and he wanted to continue to conduct the same business but could not do so
13 under the name of TIM KRUSE CONSTRUCTION, INC. Accordingly, the Trust Funds have
14 shown that the TIMOTHY BRIAN KRUSE as shareholder misused the corporate form of TIM
15 KRUSE CONSTRUCTION, INC. to perpetrate the fraud of continuing to operate as a contractor
16 as TKDEMO AND CONCRETE CUTTING, INC. using and depleting the corporate assets of
17 TIM KRUSE CONSTRUCTION, INC. as if they were his own without paying the debts of the
18 TIM KRUSE CONSTRUCTION, INC. TIMOTHY BRIAN KRUSE's Chapter 13 Bankruptcy
19 was dismissed on March 19, 2015 for failure to make plan payments and unreasonable delay that
20 is prejudicial to creditors.

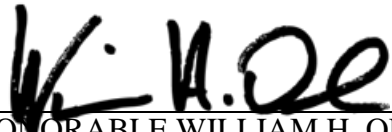
21 9. Defendants, and each of them, have been an employers within the meaning of
22 section 3(5) and section 515 of ERISA (29 U.S.C. §§ 1002(5), 1145) and an employer in an
23 industry affecting commerce within the meaning of section 301 of the LMRA (29 U.S.C. § 185).

24 10. That Defendants, and each of them, failed to pay delinquent contributions in the
25 amount of \$98,537.59 based upon work performed by TIM KRUSE CONSTRUCTION, INC.'s
26 employees and owes Plaintiffs liquidated damages and interest in the total amount of \$89,767.13
27 related to such unpaid contributions and contributions paid by TIM KRUSE CONSTRUCTION,
28 INC., but paid late.

1 11. That Defendants, and each of them, owe Plaintiffs' attorneys' fees in the total
2 amount of \$114,058.50 and costs in the amount of \$12,634.86, relating to the collection of the
3 contributions owed to the Trust Funds in this lawsuit, United States District Court for the
4 Northern District Case No. C-12-05322 JSW and Eastern District of California Bankruptcy Case
5 No. 14-22472-B-13J.

6 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT** judgment be
7 entered in favor of Plaintiffs and against Defendants, and each of them. A separate judgment will
8 issue.

9
10 DATED: November 12, 2015

11 
12 _____
13 HONORABLE WILLIAM H. ORRICK
14 UNITED STATES DISTRICT COURT
15 MAGISTRATE JUDGE

16 137210/830607