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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

5 OPERATING ENGINEERS HEALTH
6 AND WELFARE TRUST FUND FOR
7 NORTHERN CALIFORNIA, et al.,

8 Plaintiffs,

9 v.

10 WIMMER EXCAVATING, INC., a
11 California Corporation; and TERRENCE
12 WAYNE WIMMER,

13 Defendants.

Case No. 19-cv-06840-MMC

AMENDED*
ORDER GRANTING PLAINTIFFS'
MOTION FOR DEFAULT JUDGMENT;
VACATING HEARING; DIRECTIONS
TO CLERK

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United States District Court
Northern District of California

Before the Court is plaintiffs' Motion for Default Judgment, filed December 10, 2021. Defendant Wimmer Excavating, Inc., although served with a copy of the motion, has not filed a response. Having read and considered the papers filed in support of the motion, the Court deems the matter appropriate for determination on the moving papers, VACATES the hearing scheduled for January 14, 2022, and, for the reasons stated by plaintiffs, hereby GRANTS the motion, as follows:

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1. Plaintiffs shall have judgment against defendant Wimmer Excavating, Inc. in the total amount of \$337,163.81, such amount comprising unpaid contributions in the amount of \$131,935.31, liquidated damages in the amount of \$96,016.57, prejudgment interest in the amount of \$33,954.11, audit testing fees in the amount of \$10,000, reasonable attorney's fees in the amount of \$57,146, and costs in the amount of \$8,111.82.¹

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¹ To the extent plaintiffs seek to recover any additional fees or costs (see Mot. at 22:3-5), they shall file a motion within the time set forth in Rule 54(d)(2)(B) of the Federal Rules of Civil Procedure.

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*The sole amendment is to substitute "\$57,146" for "\$57,145" on page 1, line 23.

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2. The portion of the judgment representing delinquent contributions shall bear post-judgment interest at the rate of ten percent per annum, and, in all other respects, at the rate provided pursuant to 28 U.S.C. § 1961.

Lastly, as defendant Terrence Wayne Wimmer has filed for protection under Chapter 7 of the United States Bankruptcy Code (see Doc. No. 62), the Court finds "there is no just reason for delay" of entry of judgment with respect to plaintiffs' claims against Wimmer Excavating, Inc. See Fed. R. Civ. P. 54(b). Accordingly, the Clerk of Court is hereby DIRECTED to enter judgment in favor of plaintiffs and against defendant Wimmer Excavating, Inc.

IT IS SO ORDERED.

Dated: January 11, 2022


MAXINE M. CHESNEY
United States District Judge