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7
8 UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 GIL CROSTHWAITE, et al. as Trustees of the
OPERATING ENGINEERS HEALTH AND
11 WELFARE TRUST FUND, et al.,

12 Plaintiffs,

13 v.

14 MAC GRADING & PAVING, INC. dba MAC
GRADING & PAVING, DANIEL WAYNE
15 McCOWAN, JR.; MARSHA ANN
McCOWAN,

16 Defendants.

Case No.: C09-1159 PJH (JCS)

**REQUEST FOR ENTRY OF DEFAULT
JUDGMENT WITHOUT HEARING;
DECLARATION OF MURIEL B. KAPLAN
IN SUPPORT THEREOF**

Date: October 23, 2009
Time: 9:30 a.m.
Location: 450 Golden Gate Avenue
San Francisco, California
Courtroom: A, 15th Floor
Judge: Honorable Joseph C. Spero

17
18 I, Muriel B. Kaplan, declare:

19 1. I am an attorney at law licensed to practice in the State of California, and am a
20 shareholder of Saltzman and Johnson Law Corporation, attorneys for Plaintiffs herein.

21 2. I submit this Declaration in support of Plaintiffs' pending Motion for Default
22 Judgment filed on July 8, 2009. I am requesting that Judgment be entered by the Court without
23 the necessity of a hearing and that the Court vacate the hearing date presently set for October 23,
24 2009 at 9:30 a.m. before the Honorable Joseph C. Spero.

25 3. The time for filing any Opposition to the Motion for Default Judgment has passed,
26 no Opposition has been filed, and Defendants have made no contact with me. Entering Judgment
27 without the necessity of a hearing will keep the fees and costs at a minimum, particularly in light

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REQUEST FOR ENTRY OF DEFAULT JUDGMENT
Case No.: C09-1159 PJH (JCS)

1 of the fact that collection is uncertain and that no amounts have been recovered subsequent to the
2 filing of the Motion for Default Judgment on July 8, 2009.

3 4. As the Court is aware, this matter has been ongoing for some time. Defendants
4 have ignored response dates to Plaintiffs' letters, in which Plaintiffs attempted to collect the
5 amounts already due. As it is uncertain whether Plaintiffs will recover the amounts already due,
6 and attorneys' fees and costs are "out of pocket," Plaintiffs are attempting to keep fees (and thus
7 any further Trust Funds' loss) at a minimum.

8 5. Plaintiffs have exercised due diligence by mailing a copy of the Notice of Motion
9 and Motion for Default Judgment to Defendants, as indicated in the Proof of Service filed on July
10 8, 2009. As Plaintiffs have had no response from Defendants to any attempt at contact since
11 September 2008, and prior to our filing of this action in March 16, 2009, it is doubtful that
12 Defendants will appear at the hearing.

13 To the best of my knowledge and belief, Defendants are not infants or incompetent
14 persons, nor are Defendants in the military service of the United States.

15 I declare under penalty of perjury that the foregoing is true of my own knowledge and if
16 called upon I could competently testify thereto.

17 Executed this 16th day of October, 2009, at San Francisco, California.

18 SALTZMAN & JOHNSON LAW CORPORATION

19
20 By: _____/s/_____
21 Muriel B. Kaplan
Attorneys for Plaintiffs

22 IT IS SO ORDERED.

23 Default Judgment is entered for Plaintiffs and against Defendants, as stated in the [Proposed]
24 Judgment filed concurrently with the Motion for Default Judgment on July 8, 2009, without the
25 necessity of a hearing.

DENIED.

26
27 Dated: October 16, 2009 _____

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HONORABLE JUDGE JOSEPH C. SPERO
UNITED STATES MAGISTRATE JUDGE

REQUEST FOR ENTRY OF DEFAULT JUDGMENT
Case No.: C09-1159 PJH (JCS)

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PROOF OF SERVICE

I, the undersigned, declare:

I am a citizen of the United States and am employed in the County of San Francisco, State of California. I am over the age of eighteen and not a party to this action. My business address is 44 Montgomery Street, Suite 2110, San Francisco, California 94104.

On October 16, 2009, I served the following document(s):

**REQUEST FOR ENTRY OF DEFAULT JUDGMENT WITHOUT HEARING;
DECLARATION OF MURIEL B. KAPLAN IN SUPPORT THEREOF**

on the interested parties in said action by First Class U.S. Mail, by placing a true and exact copy of each document in a sealed envelope with postage thereon fully prepaid, in a United States Post Office box in San Francisco, California, addressed as follows:

**Daniel Wayne McCowan
Agent of Service of Process
Mac Grading & Paving, Inc.
2791 Swan Lane
Los Banos, CA 93635**

**Daniel Wayne McCowan
2791 Swan Lane
Los Banos, CA 93635**

**Marsha Ann McCowan
2791 Swan Lane
Los Banos, CA 93635**

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on this 16th day of October, 2009, at San Francisco, California.

_____/s/_____
Qui X. Lu