

UNITED STATES DISTRICT COURT

Northern District of California

Oakland Division

BOARD OF TRUSTEES OF THE CEMENT
MASONS HEALTH AND WELFARE
TRUST FUND FOR NORTHERN
CALIFORNIA, *et al.*,

No. C 10-03343 LB

Plaintiffs,

v.

C AND C CONCRETE INC., *et al.*,

Defendants.

BOARD OF TRUSTEES OF THE
LABORERS HEALTH AND WELFARE
TRUST FUND FOR NORTHERN
CALIFORNIA, *et al.*,

No. C 10-03344 LB

Plaintiffs,

v.

C AND C CONCRETE INC., *et al.*,

Defendants.

**ORDER REGARDING
SUPPLEMENTAL DECLARATIONS
FOR PLAINTIFFS' MOTIONS FOR
DEFAULT JUDGMENT**

The court heard argument on March 31, 2011, on the two pending motions for default judgment in these cases. At the hearing, the court ordered Plaintiffs to file supplemental declarations and briefing (if appropriate) to address factual discrepancies and overlaps in the categories of contributions identified in the currently-filed motions and declarations. Also, the court identified

1 contributions beyond those asked for in the pleadings. *See* Fed. R. Civ. P. 54(c); *Cripps v. Life Ins.*
2 *Co. of N. America*, 980 F.2d 1261, 1267 (9th Cir. 1992) (relief limited to that requested in
3 complaint). The court identified numerous apparent areas of inconsistencies in both cases on the
4 record. Some representative categories in case number 10-03343 LB include the following:

- 5 1. Plaintiffs seek contributions on behalf of the owner of C and C Concrete, Jose Herrera, for
6 September to December 2008, January to June, October 2009, and March to May 2010. *See*
7 Complaint, ECF No. 1 at 5, ¶13(c-d); Hagen Decl., ECF No. 15 at 5-6, ¶¶ 18-21; ECF No. 15
8 at 52. Plaintiffs also seek these exact contributions for September to December 2008, and
9 February to March 2009 in the category “not reported, not paid.” Plaintiffs also seek the
10 March to May 2010 contributions in the category “reported, not paid.” In essence, Plaintiffs
11 appear to double count these contributions once on behalf of Jose Herrera and once either for
12 “not reported, not paid” contributions or for “reported, not paid” contributions.
13
14 2. In their complaint, Plaintiffs allege that Defendants reported but did not pay contributions for
15 the period from February, June to September, November to December 2009, and January to
16 May 2010. *See* Complaint, ECF No. 1 at 7, ¶ 18. In their motion for default judgment,
17 Plaintiffs seek reported but unpaid contributions for the period from August, September,
18 November to December 2009, and January to July 2010. Motion for Default Judgment, ECF
19 No. 14 at 9. Thus, Plaintiffs seek, but did not plead in their complaint, reported but unpaid
20 contributions for June and July 2010. Furthermore, they pleaded in their complaint but did
21 not seek relief in their motion for default judgment for reported but unpaid contributions for
22 February, June, and July 2009.
- 23 3. In their complaint, Plaintiffs allege that Defendants reported and paid late contributions for
24 December 2008 and January 2009. Complaint, ECF No. 1 at 4-5, ¶ 13(g). In their motion
25 for default judgment, however, they seek interest and liquidated damages on reported but late
26 paid contributions for December 2008 and January, February, April, June, and July 2009.
27 Motion for Default Judgment, ECF No. 14 at 11. Additionally, for December 2008, January,
28 February, April, and June 2009, Plaintiffs claim that they both failed to receive contributions
for those periods *and* that they received contributions for those periods but received them
late. For example, for December 2008, Plaintiffs seek (1) unpaid contributions for Jose
Herrera, (2) “not reported, not paid” contributions, and (3) damages for contributions they
received late.
4. In their complaint, Plaintiffs seek an injunction requiring Defendants to submit to an audit
from January 2007 to present. Complaint, ECF No. 1 at 16, ¶ 4. In their motion for default
judgment, Plaintiffs ask for an audit from January 2009 to present. Motion for Default, ECF
No. 14 at 3. At another point in their motion, Plaintiffs ask for an injunction to audit
Defendants’ financial records from January 2008 to present. *Id.* at 14-15.

23 At oral argument, Plaintiffs stated that for the apparent discrepancies and double counting for
24 employee contributions, some were not reported and not paid, and others for the same time period
25 were reported and not paid. This explanation is not evident from the record but may be established
26 in a supplemental declaration.

27 The court identified similar discrepancies in case number 10-03344 LB:

- 28 1. In their complaint, Plaintiffs allege that Defendants reported but did not pay contributions for

1 September, October, December 2009, and January 2010. Complaint, ECF No. 1 at 4-5, ¶
2 13(a) and (b). In their motion for default judgment, however, they seek unpaid
3 contributions, interest, and liquidated damages for September, October, December 2009,
4 January, and March to July 2010. Motion for Default Judgment, ECF No. 14 at 2, 6.
5 Plaintiffs thus seek, but did not plead in their complaint, unpaid contributions for March to
6 July 2010.

- 7 2. In their motion for default judgment, Plaintiffs seek unpaid contributions, interest, and
8 liquidated damages for contributions not reported and not paid on behalf of employee
9 Nicholas Arrollo for January 2010. *Id.* at 2-3 and 9-11. Plaintiffs' complaint does not
10 mention any unpaid contributions solely on behalf of Mr. Arrollo for January 2010. In
11 addition, Mr. Arrollo's hours for January 2010 are at least partially included in the "reported,
12 not paid" contributions that Plaintiffs seek.
- 13 3. Based on the total amount of unpaid contributions that Plaintiffs seek for "reported, not paid"
14 contributions, their corresponding interest calculations are incorrect.
- 15 4. Plaintiffs do not seek contributions, interest, or liquidated damages for Industry
16 Stabilization, ACE - Contract Intrap & App, or Contr. Admin/Market Pres. even though these
17 categories are listed in the supporting documentation. Hagan Declaration, ECF No. 15 at 38-
18 58, Exhs. I, J, and K.

19 In both cases, Plaintiffs must provide the court with the specific amounts that Defendants paid,
20 but paid late in addition to their interest and liquidated damages calculations.

21 This is not an exhaustive list of the discrepancies and errors but a sample. The court devoted
22 considerable time to identifying some of the discrepancies, but it is Plaintiffs' obligation to identify
23 what relief they seek consistent with the relief they requested in the complaints.

24 As ordered on the record, Plaintiff shall file the supplemental filings by April 28, 2011. A
25 further hearing is set for June 2, 2011 at 11:00 a.m. in Courtroom 4.

26 **IT IS SO ORDERED.**

27 Dated: March 31, 2011



28 LAUREL BEELER
United States Magistrate Judge