

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  
SOUTHERN DISTRICT OF CALIFORNIA**

IRON WORKERS DISTRICT COUNCIL  
OF SOUTHERN OHIO AND VICINITY  
BENEFIT TRUST; IRON WORKERS  
DISTRICT COUNCIL OF SOUTHERN  
OHIO AND VICINITY PENSION  
TRUST; IRON WORKERS DISTRICT  
COUNCIL OF SOUTHERN OHIO AND  
VICINITY ANNUITY TRUST,

Plaintiffs,

vs.

FRANK MICHAEL COIT, an individual  
and doing business as Lone Star  
Development,

Defendant.

CASE NO. 09cv2071 WQH (RBB)

**ORDER**

HAYES, Judge:

The matter before the Court is Plaintiff's Ex Parte Application for an Order Correcting Amended Order on Default Judgment Entered July 28, 2010. (Doc. # 15).

**BACKGROUND**

On September 22, 2009, Plaintiffs Iron Workers District Council of Southern Ohio and Vicinity Benefit Trust, Iron Workers District Council of Southern Ohio and Vicinity Pension Trust, and Iron Workers District Council of Southern Ohio and Vicinity Annuity Trust (collectively the "Trust Funds") initiated this action by filing their complaint. (Doc. # 1). The complaint alleges Defendant Frank Michael Coit, doing business as Lone Star Development ("Lone Star"), failed to pay contributions to Plaintiffs pursuant to three Trust Agreements. *Id.*

1 at 2-3. The complaint alleges Coit and Lone Star Development, formerly a corporation, are  
2 alter-egos of one another and that Coit is therefore liable for the business's failure to pay these  
3 contributions. *Id.* at 8-9. The complaint alleges four claims: (1) breach of a collective  
4 bargaining agreement with Iron Workers Local 22, which required Coit to adhere to the Trust  
5 Agreements with Plaintiffs; (2) breach of the Trust Agreements; (3) violation of the Employee  
6 Retirement Income Security Act ("ERISA"); and (4) "damages for alter ego violations  
7 establishing liability for Defendant." *Id.* at 9-11. Plaintiffs seek \$86,685.89 in actual damages  
8 for Defendant's failure to pay the trust fund, liquidated damages, interest, in addition to  
9 attorney's fees and costs. *Id.* at 12. On October 7, 2009, the Trust Funds served Coit. (Doc.  
10 # 4 at 2). Coit failed to file an answer to the complaint. On November 2, 2009, the Trust  
11 Funds requested an entry of default. (Doc. # 5). On November 3, 2009, the Clerk of the Court  
12 entered default against Coit. (Doc. # 6). On January 26, 2009, the Court issued an Order to  
13 Show Cause as to why this case should not be dismissed for failure to timely move for default  
14 judgment. (Doc. # 7). The order permitted the Trust Funds to move for default judgment  
15 within thirty days. *Id.* at 2.

16 On February 2, 2010, the Trust Funds filed their first Motion for Default Judgment.  
17 (Doc. # 8). On April 27, 2010, the Court denied the motion without prejudice. (Doc. # 11).  
18 The Court held that the factual allegations of the complaint were sufficient to sustain the  
19 causes of action pleaded in the complaint, but the Trust Funds had failed to establish damages  
20 by a preponderance of the evidence because of errors in the calculations presented to the Court  
21 and failure to provide sufficient evidence of attorney's fees. *Id.* at 6. The Court allowed the  
22 Trust Funds to file an amended Motion for Default Judgment within thirty days. *Id.* at 7.

23 On May 24, 2010, the Trust Funds filed their second Motion for Default Judgment.  
24 (Doc. # 12). On July 28, 2010, the Court granted the Trust Funds' second Motion for Default  
25 Judgment and awarded \$86,390.11 in damages. (Doc. # 13). Due to a typographical error, the  
26 Court issued an amended order the same day. (Doc. # 14). On August 3, 2010, the Trust  
27 Funds filed their Ex Parte Application for an Order Correcting Amended Order on Default  
28 Judgment Entered July 28, 2010. (Doc. # 15).

1 **ANALYSIS**

2 The Trust Funds contend that this Court “inadvertently excluded the amount of liquidate  
3 damages (\$7,628.90) and interest” (\$1,245.52)” from the total amount of damages the Court  
4 awarded despite ruling that the Trust Funds are entitled to liquidated damages and interest.  
5 (Doc. # 15 at 1). The Trust Funds contend the total amount of damages the Court should have  
6 awarded was \$99,518.53. *Id.*

7 Although the Trust Funds now assert they moved for \$99,518.53 in damages, their  
8 second Motion for Default Judgment states: “[t]he *total amount owed* to the Trust Funds in  
9 unpaid contributions, *liquidated damages and interest* is \$86,390.11.” (Doc. # 12-1 at 8)  
10 (emphasis added). The Court already awarded the Trust Funds \$7,628.90 in liquidated  
11 damages and \$1245.52 in interest. These figures were included in the total damages award of  
12 \$86,390.11. *See* Declaration of Peggy Gotthard, ¶¶ 29-32.

13 The evidence the Trust Funds presented established that Defendant owes the Benefit  
14 Trust \$29,160.48 in employer contributions, \$2,916.04 in liquidated damages, and \$583.20 in  
15 interest; owes the Pension Trust \$31,347.61 in employer contributions, \$ 3,134.75 in liquidated  
16 damages, and \$331.16 in interest; and owes the Annuity Trust \$16,953.60 in employer  
17 contributions, \$1,632.11 in liquidated damages, and \$331.16 in interest. Adding these figures  
18 establishes that Defendant owes \$77,461.69 in employer contributions, not \$86,390.11 as the  
19 Trust Funds now assert. The Court added \$7,682.90 in liquidated damages and \$1,245.52 in  
20 interest to the \$77,461 in employer contributions, for a total damages award of \$86,390.11.

21 The following chart shows the damages amounts for each trust fund for each category  
22 of damages:

23


	Benefit Trust	Pension Trust	Annuity Trust		<b>Total per category:</b>
24	Employer Contributions	\$29,160.48	\$31,347.61	\$16,953.60	\$77,461.69
25	Liquidated Damages	\$2,916.04	\$3,134.75	\$1,632.11	\$7,682.90
26	Prejudgment Interest	\$583.20	\$331.16	\$331.16	\$1,245.52
27					
28	<b>Total Per Trust Fund:</b>	\$32,659.72	\$34,813.52	\$18,916.87	<b>Total: \$86,390.11</b>

1 There is no error in the prior order which requires correction. The Trust Funds' motion is  
2 denied.

3 **CONCLUSION**

4 IT IS HEREBY ORDERED that Plaintiff's Ex Parte Application for an Order  
5 Correcting Amended Order on Default Judgment Entered July 28, 2010 (Doc. # 15) is  
6 **DENIED**. As the Court's previous order concluded, Plaintiffs are entitled to \$86,390.11  
7 in damages for contributions, interest, and liquidated damages, \$3,700.00 in attorney's fees,  
8 and \$500.00 in costs. No later than **fourteen (14) days** from the date of this Order,  
9 Plaintiff shall email a proposed judgment consistent with this Order in WordPerfect or  
10 Word format to efile\_hayes@casd.uscourts.gov.

11 DATED: August 10, 2010

12   
13 **WILLIAM Q. HAYES**  
14 United States District Judge