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HAWAII LABORERS' TRUST FUNDS

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

8 DEC 11 2008
at _____ o'clock and _____ min. _____ M.
SUE BEITIA, CLERK *[Signature]*

LODGED

DEC 05 2008
2:30 p.m.
CLERK, U.S. DISTRICT COURT
DISTRICT OF HAWAII

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

HAWAII LABORERS' TRUST) CIVIL NO. 08-00125 HG BMK
FUNDS, (*Hawaii Laborers' Health &*)
Welfare Trust Funds by its trustees) FINDINGS OF FACT AND
Harry Ushijima, Albert Hamamoto,) RECOMMENDATION FOR
Rocco Davis, Kenneth Casarez, Daniel) DISPOSITION RE: PLAINTIFFS'
Nakamura, Robert Trenkle, Walter) MOTION FOR ENTRY OF
Arakaki, , Anacleto Alcantra, etc., et) DEFAULT JUDGMENT AGAINST
al.,) DEFENDANTS

Plaintiffs,)

vs.)

J.B. WILSON, INC., a Hawaii) DATE: October 14, 2008
corporation, JERRY B. WILSON,) TIME: 2:30 p.m.
JUDGE: BARRY M. KURREN

Defendants.)

FINDINGS OF FACT AND RECOMMENDATION FOR
DISPOSITION RE: PLAINTIFFS' MOTION FOR ENTRY OF
DEFAULT JUDGMENT AGAINST DEFENDANTS

Plaintiffs HAWAII LABORERS' TRUST FUNDS' ("Plaintiffs") Motion for Entry of Default Judgment Against Defendants J.B. WILSON, INC., and JERRY B. WILSON ("Defendants"), having come for hearing before the Honorable Barry M. Kurren, Magistrate Judge on October 14, 2008, at 2:30 p.m. , with Pablo P. Quiban, Esq. appearing for Plaintiffs, no one appearing on behalf of Defendants; and the Court having read the memoranda, declarations, affidavits and exhibits in support and in opposition thereto, having considered the evidence presented, and having heard oral arguments, and being fully advised in the premises and good cause appearing therefor, it is RECOMMENDED that Plaintiffs' Motion for Entry of Default Judgment Against Defendants be GRANTED.

The court bases its recommendation upon the following findings:

FINDINGS OF FACT

1. Defendants are registered to do business in the State of Hawaii with its principal place of business in the City and County of Honolulu, State of Hawaii.
2. Defendants entered into a collective bargaining agreement with

the Laborers' International Union of North America, Local 368, AFL-CIO ("Union") on December 8, 2006 which was acknowledged by the Certification of Receipt and Acceptance, signed by Defendant Wilson, which agreements by their terms incorporated the Master Agreement Covering Construction Laborers in the State of Hawaii ("CBA"); copies of both documents were attached to the Complaint filed herein.

3. That under the CBA, Defendants promised to contribute and pay employee benefit contributions once per month to Plaintiffs for each hour of work performed by Defendants' employees for work covered by the CBA, which contributions are to be paid to Plaintiffs on or before the 20th day of each month for hours worked the prior month.

4. That under the CBA, Defendants agreed that in the event monthly trust fund contributions were not paid when due, Defendants would pay the sum of \$20.00 or 20%, whichever was greater, of the amount of the trust contributions owed to each Trust Fund for each delinquency, as and for liquidated damages and not as penalty.

5. That under the CBA, Defendants agreed to submit its monthly payroll reports and to provide Plaintiffs with all the information necessary to carry out the purposes of the various trust funds, and to pay interest at the rate of 12% per

annum on unpaid balances owed.

6. For the period from April 2007 to June 2007, Defendants under-reported hours worked by employees who were covered by the CBA which resulted in unpaid contributions of THIRTEEN THOUSAND ONE HUNDRED NINETY FIVE and 19/100 DOLLARS (\$13,195.19) and liquidated damages of TWO THOUSAND SIX HUNDRED FOURTEEN and 83/100 (\$2,614.83) for a total owed of FIFTEEN THOUSAND EIGHT HUNDRED TEN and 02/100 (\$15,810.02) however due to payments made by Defendants, the total amount owing was paid off in May 2008.

8. That after the Defendants made the payment on the contributions and liquidated damages, Defendants refused and did not pay the interest owed of ONE THOUSAND THREE HUNDRED NINETEEN and 50/100 (\$1,319.50) which interest was determined by monthly payroll report transmittals submitted by Defendant to the trust fund administrator's office, as noted in the *Declaration of Tracy Masuda*, which Declaration was filed herein on August 27, 2008.

9. The Defendants were served with a copy of the Complaint; Summons in this case by personal delivery on April 5, 2008, as noted in the Return of Service filed herein on April 7, 2008.

9. That due to Defendants' failure to file an Answer or respond to

the Complaint, a *Request For Entry of Default* was filed herein on August 13, 2008.

10. Plaintiffs then filed its *Motion For Entry of Default Judgment Against Defendants*, on August 27, 2008, which was heard on October 14, 2008.

11. That at this time, the total amount owing by Defendants, which does not include attorney's fees and costs is ONE THOUSAND THREE HUNDRED NINETEEN and 50/100 (\$1,319.50).

12. That Plaintiffs are entitled to reasonable attorney's fees and costs pursuant to Section 14, II, 4(a)(5), p. 20 of the CBA and pursuant to the Employees Retirement Income Security Act, 29, U.S.C. Section 1132(g)(2), and as supported by the Declaration of Counsel and Bill of Costs submitted concurrently herewith.

RECOMMENDATION

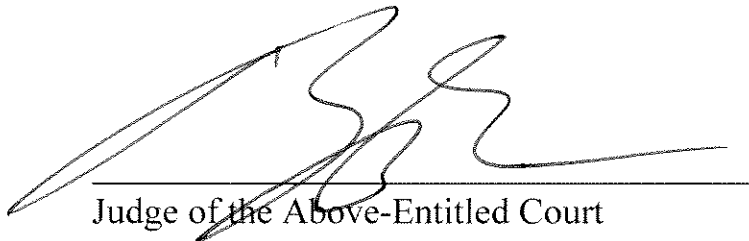
Pursuant to the foregoing findings of fact, it is RECOMMENDED that:

A. Plaintiffs' Motion for Entry of Default Judgment be GRANTED and that judgment be entered against Defendants for the sum of ONE THOUSAND THREE HUNDRED NINETEEN and 50/100 DOLLARS (\$1,319.50) plus legal interest from the entry hereof until paid in full.

B. Plaintiffs be awarded the amount of TWO THOUSAND ONE HUNDRED FORTY SIX and 00/100 (\$2,146.00) for reasonable attorney's fees and ONE HUNDRED ONE and 07/100 (\$101.07) for tax.

IT IS SO FOUND AND RECOMMENDED.

DATED: Honolulu, Hawaii, 12. 9. 2008 .



Judge of the Above-Entitled Court