

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

TRUSTEES of the CHICAGO REGIONAL COUNCIL OF CARPENTERS PENSION FUND, CHICAGO REGIONAL COUNCIL OF CARPENTERS WELFARE FUND, and CHICAGO REGIONAL COUNCIL OF CARPENTERS APPRENTICE & TRAINEE PROGRAM FUND, Plaintiffs, vs. EXEL INTERIOR CONSTRUCTION, INC., Defendant. CASE NO. 08CV7336 JUDGE HOLDERMAN

MOTION FOR REINSTATEMENT AND ENTRY OF ORDER OF JUDGMENT

Plaintiffs, by their attorney, Amy Elizabeth Paluch Epton of Whitfield, McGann & Ketterman, move this Honorable Court to enter Judgment by Default according to Fed. R. Civ. P. 55 for Defendant, EXEL INTERIOR CONSTRUCTION, INC.'S, failure to appear, answer or otherwise plead. Further, in support of this Motion the Plaintiffs state:

1. Plaintiffs filed their complaint on December 23, 2008 and the summons and complaint were served on Claudia Villa, Secretary, on January 5, 2009 by the process server. (Exhibit A, Affidavit of Service)

2. At all times relevant to this action, the Defendant, EXEL INTERIOR CONSTRUCTION, INC., has been bound by the provisions of a Collective Bargaining Agreement and the Trust Agreements which created the Trust Funds. Pursuant to the provisions of the Trust Agreements and the Collective Bargaining Agreement, the Defendant is required to submit monthly reports to the Trust Funds which list the number of hours worked by the Defendant's employees and to pay the ERISA

contributions based on those hours.

3. The Plaintiffs audited the books and records of the Defendant, EXEL INTERIOR CONSTRUCTION, INC., to verify that all contributions were submitted. The audit revealed that the Defendant breached the provisions of the Collective Bargaining Agreement by underpaying contributions that are owed to the Trust funds based upon the hours worked by employees and/or measured by the hours worked by subcontractors during the period of July 2005 through June 2007. The contributions owed to the Trust Funds as a consequence of this breach were \$5,358.40. **(Exhibit B, Affidavit of John Libby)**

5. The Defendant, EXEL INTERIOR CONSTRUCTION, INC., owes interest on the unpaid ERISA contributions in the amount of \$738.00 pursuant to the Trust Agreements and 29 U.S.C. §1132(g)(2)(B). **(Exhibit B)**

6. The Defendant owes liquidated damages on the unpaid ERISA contributions in the amount of \$1,071.68 for the period July 2005 through June 2007 pursuant to the Collective Bargaining Agreements, the Trust Agreements and 29 U.S.C. §1132(g)(2)(C)(iii). **(Exhibit B)**

7. The Defendant, EXEL INTERIOR CONSTRUCTION, INC., owes the sum of \$6,073.75 for necessary and reasonable attorney fees, audit fees of \$4,468.90 and costs of \$405.00 which are collectible under the terms of the Collective Bargaining Agreement, the Trust Agreements and 29 U.S.C. §1132(g)(2)(D). **(Exhibit C, Affidavit of Amy Elizabeth Paluch Epton)**

8. On May 28, 2009 the court entered an Order of Dismissal without prejudice and with leave to reinstate before April 15, 2010, based upon a settlement agreement between the parties.

9. Defendant breached the terms of the settlement agreement, and has made no payments under that agreement.

WHEREFORE, Plaintiffs pray that the Court reinstate this case and enter a judgment by default in the amount of \$18,115.73.

Respectfully Submitted,

/s/ Amy Elizabeth Paluch Epton
Attorney for Plaintiffs

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