

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

CHICAGO REGIONAL COUNCIL OF CARPENTERS PENSION FUND, et al.,)	
)	CASE NO. 09CV2791
Plaintiff,)	
vs.)	JUDGE CONLIN
)	
MACDONALD CONSTRUCTION SERVICES, INC.,)	
Defendant.)	

MOTION FOR 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, MACDONALD CONSTRUCTION SERVICES, INC.'S, failure to appear, answer or otherwise plead. Further, in support of this Motion the Plaintiffs state:

1. Plaintiffs filed their complaint on May 6, 2009 and the summons and complaint were served on Defendant's registered agent, Thomas Vaclavek, on May 18, 2009 via the Process Server. **(Exhibit A, Affidavit of Service)**
2. The Defendant, MACDONALD CONSTRUCTION SERVICES, INC., failed to appear, answer or otherwise plead within the time allowed by the Fed. R. Civ. P.
3. At all times relevant to this action, the Defendant, MACDONALD CONSTRUCTION SERVICES, 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.

4. The Plaintiffs audited the books and records of the Defendant, MACDONALD CONSTRUCTION SERVICES, 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 2006 through March 2008. The contributions owed to the Trust Funds as a consequence of this breach are \$4,248.50.

(Exhibit B, Affidavit of John Libby)

5. The Defendant owes liquidated damages on the unpaid ERISA contributions in the amount of \$849.70 for the period July 2006 through March 2008 pursuant to the Collective Bargaining Agreements, the Trust Agreements and 29 U.S.C. §1132(g)(2)(C)(ii). **(Exhibit B)**

6. The Defendant, MACDONALD CONSTRUCTION SERVICES, INC., owes interest on the unpaid ERISA contributions in the amount of \$780.36 pursuant to the Trust Agreements and 29 U.S.C. §1132(g)(2)(B). **(Exhibit B)**

7. The Defendant, MACDONALD CONSTRUCTION SERVICES, INC., owes the sum of \$2,022.00 for necessary and reasonable attorney fees and audit fees of \$5,025.00 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. The Defendant, MACDONALD CONSTRUCTION SERVICES, INC., breached the provisions of the Collective Bargaining Agreement by failing to allow Plaintiffs to complete an audit of Defendant's books and records for the period July 2006 through March 2008 after demand for audit was made upon Defendant.

WHEREFORE, Plaintiffs pray that their motion for judgment by default be granted in the amount of \$13,330.56 and that, within ten days, the Defendant be ordered to produce the missing records July 2006 through March 2008, and that the Court retain jurisdiction for the purpose of adding additional amounts owed, should the audit of the alter ego demonstrate that additional amounts are owed.

Respectfully Submitted,

/s/ Amy Elizabeth Paluch Epton
Attorney for Plaintiffs

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