

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

**LABORERS' PENSION FUND and )  
LABORERS' WELFARE FUND OF THE )  
HEALTH AND WELFARE DEPARTMENT )  
OF THE CONSTRUCTION AND GENERAL )  
LABORERS' DISTRICT COUNCIL OF )  
CHICAGO AND VICINITY, JAMES S. )  
JORGENSEN, Administrator of the Funds, )**

**Plaintiffs, )**

**v. )**

**FRANCIS, LLC, )**

**Defendant. )**

**Case No. 11 C 3884**

**Judge St. Eve**

**AFFIDAVIT OF JAMES FOSCO**

STATE OF ILLINOIS )  
 )  
COUNTY OF COOK )

James Fosco being first duly sworn on oath, deposes and states as follows:

1. I am a Representative of the Field Department, employed by the Laborers' Pension Fund and Laborers' Welfare Fund of the Health and Welfare Department of the Construction and General Laborers' District Council of Chicago and Vicinity (the "Funds"), the plaintiffs in the above referenced action. My responsibilities include oversight of the collection of amounts owed by Francis, LLC (the "Company"). This affidavit is submitted in support of the Laborers' Funds' Motion To Reinstate This Cause Consistent With The Settlement Agreement And To Compel Reporting Information.

2. The Company has been a signatory employer at least since May 24, 2010 as reflected

by the Funds' records and as shown in the collective bargaining agreement that was attached to the Complaint, and is a true and correct copy of the agreement between the Company and the Construction and General Laborers' District Council of Chicago and Vicinity and its affiliated local ("Union"), on file with the Funds.

3. On or about February 21, 2011, the Funds and the Company (collectively hereinafter the "parties") signed a Settlement Agreement and Release (the "Agreement") and an Installment Note to resolve the above captioned case and covering an audited period of May 24, 2010 through October 31, 2010 and an as yet unaudited period of November 1, 2010 through January 31, 2012.

4. The parties also signed a stipulated dismissal, consenting that this Court retain jurisdiction for the duration of the Company's note payments pursuant to the Agreement and the Installment Note for the purpose of enforcing the Agreement and Installment Note.

5. Since January 1, 2013, the Company has failed to submit any of its note payments, and to date \$21,375.45 remains due to the Funds pursuant to the Agreement and the Installment Note.

6. The Company has also failed to submit its monthly reports and payments to the Funds for February 2013 and March 2013, and has failed to submit its monthly reports and payments to the Dues Funds for April 2011, December 2011, January 2012, February 2012, and April 2012 to the present.


7. The respective Agreements and Declarations of Trust of the Laborers Funds, to which the Company is bound, require payment of liquidated damages in the amount of 20 percent of any delinquent principal contributions to the Welfare, Pension, and Training funds. The same agreements establish that liquidated damages are due in the amount of 10 percent of the principal amount of delinquent contributions to the LDCLMCC, CAICA and LECET funds, and for Union

dues.


8. To establish the amounts that Francis LLC owes to the Funds for its unreported principal contributions, Union dues, liquidated damages and accumulated interest, the Funds may require the Company to submit to a compliance audit, covering the unaudited period from November 1, 2010 through the present, pursuant to the Company's obligations under its collective bargaining agreement with the Union and the respective Agreements and Declarations of Trust of the Laborers Funds.

9. The Company is further obligated to pay the Funds for the costs associated with a compliance audit, as well as all reasonable attorneys' fees and court costs incurred by the Funds to enforce the Settlement Agreement and Release and Installment Note.

10. As required by Article IX , paragraph 1 of the collective bargaining agreement, all employers are required to procure, carry and maintain a surety bond in an amount that is satisfactory to the Union. This surety bond must be in excess of \$5,000.00 to guarantee the payment of wages, Pension and Welfare Trust Contributions during the term of the Agreement. The Company must show proof of maintaining a surety bond as required by the contract.

  
James Fosco  
Field Department Representative

Subscribed and sworn to before me  
this 20 day of April, 2013

  
NOTARY PUBLIC

