

EXHIBIT C

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

CHICAGO REGIONAL COUNCIL OF)	
CARPENTERS PENSION FUND et al)	
)	
Plaintiffs,)	Case No. 14 CV 2616
v.)	
)	Judge Der-Yeghiayan
MERIDIENNE CORPORATION)	
)	
Defendant.)	

NOTICE OF FILING

TO: Kenneth W Sullivan, Attorney at Law
1 Northfield Plaza
Suite 300
Northfield, IL 60093-1214

PLEASE TAKE NOTICE that on May 2, 2016 the undersigned electronically filed with the Clerk of the United States District Court, Northern District of Illinois, Eastern Division: *PLAINTIFFS' REPLY TRIAL BRIEF*. A true and correct copy of which is attached hereto and hereby served upon you electronically.

Respectfully Submitted
WHITFIELD, McGANN & KETTERMAN
By: /s/ Nicholas E. Kasmer
Attorney for the Plaintiffs

CERTIFICATE OF SERVICE

The undersigned, Nicholas E. Kasmer, an attorney, hereby certifies that he caused the aforementioned documents to be served upon the parties via electronic transmission on May 2, 2016.

/s/ Nicholas E. Kasmer

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IN THE UNITED STATES DISTRICT COURT
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CHICAGO REGIONAL COUNCIL OF)	
CARPENTERS PENSION FUND, et al.)	
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Plaintiffs,)	Case No. 14 CV 2616
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PLAINTIFFS' REPLY TRIAL BRIEF

Now come the Plaintiffs, Chicago Regional Council of Carpenters Pension Fund et al, by and through their attorneys, Travis J. Ketterman and Nicholas E. Kasmer, and submit the following reply trial brief.

INTRODUCTION

On February 18, 2016, the parties appeared before this Court for a final pretrial conference in this matter. (Docket Entry 39.) At said conference, the parties agreed to try this matter by providing this Court with written submissions regarding each side's respective positions. *Id.* Plaintiffs' opening brief was to be filed by March 24, 2016, Defendant's responsive brief by April 18, 2016, Plaintiffs' rebuttal brief by May 2, 2016, and Defendant's rebuttal brief by May 9, 2016. *Id.*

On March 24, 2016, the Plaintiffs filed their opening brief along with a number of supporting exhibits and evidence regarding this matter. (Docket Entry 40-42.) On April

18, 2016, the Defendant failed to file its responsive brief in this matter. To date, the Defendant has not filed its responsive brief in this matter.

ARGUMENT

The Plaintiffs should be granted judgment against the Defendant based on the Defendant's failure to file a responsive brief in this matter.

The Plaintiffs filed its trial brief on March 24, 2016 in this matter. That trial brief set forth that the Defendant is a Union signatory who underpaid contributions to the Plaintiff Trust Funds. The original audit along with the adjusted audit were provided in this matter along with affidavits from both the original Auditor and the trust fund personnel involved in the adjustments to the audit. The original audit was determined by a review of the Defendant's book and records. The adjusted audit was again done by reviewing some additional records from the Defendant and some decisions by the Trust Funds not to pursue certain discrepancies. The Rule 30(b)(6) deposition transcript was also provided which showed that all individuals included in the audit were carpenters performing carpentry work. The additional auditor and attorneys cost and fees in this matter were supported by affidavits from both the Auditor and the attorneys working on this matter.

All of these issues should be deemed admitted by this Court based on the Defendant's failure to file a responsive brief. Failure to file a response results in all facts alleged in the original brief to be deemed admitted. *Curtis v. Costco Wholesale Corp.*, 807 F.3d 215, 218 (7th Cir. 2015) (quoting N.D. Ill. R. 56.1(b)(3)(B)); *SEC v. Nutmeg Grp., LLC*, 2016 U.S. Dist. LEXIS 19961, 9 (N.D. Ill. Feb. 18, 2016); *Arellano v. Leach*, 2015 U.S. Dist. LEXIS 135946 (N.D. Ill. Oct. 6, 2015). This Court should therefore find that the discrepancies set forth by the Funds are owed along with the liquidated damages and

interest. This Court should also find that the auditor¹ and attorneys² fees and costs in the matter are also reasonable and award such. As such, judgment should be entered for the Plaintiffs in the amount of \$98,788.10.

CONCLUSION

Judgment should be entered for the Plaintiffs and against the Defendant based upon the Plaintiffs' trial brief submission and the Defendant's failure to submit any rebuttal brief. The Plaintiffs would ask that Judgment be entered for the Plaintiff and against the Defendant for the following amounts:

Audit Discrepancies	\$40,568.31
Liquidated Damages	\$8,113.65
Interest	\$3,779.79
Auditor Fees	\$6,883.00
Attorney Fees/Costs	\$39,443.35
TOTAL	\$98,788.10

¹ The Seventh Circuit has construed 29 U.S.C. § 1132(g)(2)(E) to include an award of audit costs. *Moriarty ex rel. Local Union No. 727, I.B.T. Pension Trust v. Svec*, 429 F.3d 710, 721 (7th Cir. 2005). Similar auditor fees and costs were found reasonable in *Laborers' Pension Fund v. J & S Constr. Sewer & Water, Inc.*, 2012 U.S. Dist. LEXIS 112048 (N.D. Ill. Aug. 9, 2012), where that Court found the costs relatively low and no evidence was presented showing that the audit was "inaccurate or [a] waste of time." *Id.*

² Hourly rates between \$175.00 and \$245.00 per hour have already been found reasonable by other judges for these types of matters in the Northern District. *Trustees of the Chicago Reg'l Council of Carpenters Pension Fund v. Rock-It Interiors, Inc.*, 2015 U.S. Dist. LEXIS 171417, 2015 WL 9315541, at 3 (N.D. Ill. Dec. 23, 2015) (\$175 to \$225 per hour found reasonable rates); *Carpenters Fringe Benefit Funds of Illinois v. McGreal Constr. Co.*, 2013 U.S. Dist. LEXIS 145238, 2013 WL 5548893, at 4 (N.D. Ill. Oct. 8, 2013) (average rate of \$205 per hour found reasonable); *Bd. of Trs. v. 6516 Ogden Ave., LLC*, 2016 U.S. Dist. LEXIS 33699, at 15 (N.D. Ill. Mar. 16, 2016) (\$257 per hour found reasonable). Also in *Sullivan v. Tag Plumbing Co.*, 2012 U.S. Dist. LEXIS 125328, 21-22 (N.D. Ill. Sept. 4, 2012), that Court found a similar amount of attorneys fees and cost reasonable on an ERISA audit and collection matter.

Plaintiffs have drafted and attached as an exhibit to this reply brief a proposed Judgment Order for this matter. (Tab 1.) Judgment should be entered by this Court in the amount of \$98,788.10 for the Plaintiffs and against the Defendant.

Respectfully Submitted:

CHICAGO REGIONAL COUNCIL OF
CARPENTER PENSION FUND, et al.,

By: _____ /s/
NICHOLAS E. KASMER

Travis J. Ketterman
Nicholas E. Kasmer
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May 2, 2016

TAB 1

IN THE UNITED STATES DISTRICT COURT
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MERIDIENNE CORPORATION)	
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Defendant.)	

JUDGMENT ORDER

WHEREAS, Plaintiffs filed their Complaint on April 11, 2014, and the Defendant was served with a copy of the Complaint and Summons on April 22, 2014; and

WHEREAS, the Plaintiffs submitted their trial brief submission on March 24, 2016; and

WHEREAS, the Defendant has failed to submit its responsive brief by April 18, 2016, and

NOW THEREFORE, Plaintiffs' proposed findings of facts and law are either deemed admitted or this Court finds in the Plaintiffs' favor; and

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment is entered on behalf of the Plaintiffs and against the Defendant, MERIDIENNE CORPORATION, in the sum of \$98,788.10 representing the following amounts:

A) Audit Discrepancies	\$40,568.31
B) Liquidated Damages	\$8,113.65
C) Interest	\$3,779.79
D) Auditor Fees	\$6,883.00
E) Attorney Fees/Costs	\$39,443.35
TOTAL	\$98,788.10

Further, Plaintiffs are awarded their costs and attorneys' fees to execute or otherwise collect on this judgment.

ENTERED:

The Honorable Samuel Det-Yeghiayan

United States District Judge

Dated: _____