

**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, and JAMES S.
JORGENSEN, Administrator of the Funds,**

Plaintiffs,

v.

CONCRETE ETC., INC.,

Defendant.

Honorable John Z. Lee

Case No. 16 C 8350

AFFIDAVIT OF ROCCO MARCELLO

STATE OF ILLINOIS)
)
COUNTY OF COOK)

Rocco Marcello 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 Concrete Etc, Inc. (the "Company"). This affidavit is submitted in support of the Laborers' Funds' Motion for Damages.

2. The Company has been a signatory employer since October 3, 2008 as reflected by the Funds' records and as shown in the Collective Bargaining Agreement that was attached to the

Complaint in the matter, 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. The Company had failed to submit its monthly reports to the Funds and this lawsuit was filed, on August 25, 2016. After the Funds filed the Complaint and effectuated service, the Company failed to answer and has continued to fail to remit its monthly reports and payments as required by the Collective Bargaining Agreement.

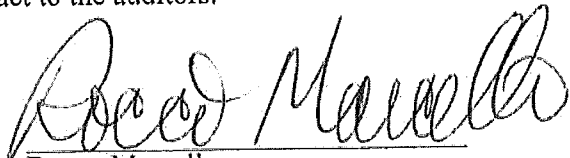
4. The Funds selected Calibre CPA Group, PLLC ("Calibre") to review the Company's books and records for compliance from April 1, 2012 through September 30, 2016. Calibre completed this review and the audit report, dated January 12, 2017, shows that \$10,299.51 is owed to the Funds for delinquent principal contributions during the audit period, including \$420.76 in delinquent Union dues. The respective Agreements and Declarations of Trust of the Laborers' Funds, to which the Company is bound, require it to pay the \$1,095.52 cost for the audit. The audit report with Calibre's invoice is attached to the Plaintiffs' Motion for Damages as Exhibit B.

5. 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 the principal amount of delinquent 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. Also, interest is calculated at twelve (12) percent and is owed for all delinquencies excluding the union dues. These amounts are detailed in the Laborers' Pension & Welfare Funds Contractor Penalty History report that shows \$1,952.96 in liquidated damages due to the delinquent

contributions to the Welfare, Pension, and Training funds and \$53.47 in liquidated damages due to the delinquent contributions to the LDCLMCC, CAICA and LECET funds, and for Union dues, as well as \$214.11 for accumulated liquidated damages for prior delinquent contributions. Thus, the Company owes a total amount of \$2,006.43 for liquidated damages from the audit findings, plus \$214.11 for accumulated liquidated damages, and \$1,917.45 in accumulated interest to date pursuant to its delinquency. The Laborers' Pension & Welfare Funds' Audit Summary Spreadsheet Report details these amounts and is attached to the Plaintiffs' Motion for Damages as Exhibit D.

6. On January 17, 2017, a letter was sent to the Company with a demand in the amount of \$19,640.02 for delinquent principal contributions, union dues, liquidated damages, audit costs and attorneys's fees as of that date. This letter further demanded that the Company present challenges, if any, to the audit findings by January 27, 2017.

7. As required by 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 was unable to show proof of maintaining a surety bond as required by the contract to the auditors.


Rocco Marcello
Field Department Representative

Subscribed and sworn to before me
this 28 day of February 2017


NOTARY PUBLIC

