

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISIONMICHIGAN LABORERS' HEALTH CARE
FUND, et al.,

Case No. 2:09-cv-14800

Plaintiffs,

HONORABLE STEPHEN J. MURPHY, III

v.

MLS CONCRETE, LLC, et al.,

Defendants.

**ORDER ADOPTING AND AFFIRMING REPORT
AND RECOMMENDATION (docket no. 13) AND GRANTING
PLAINTIFFS' MOTION FOR PARTIAL DEFAULT JUDGMENT (docket no. 9)**

This is a action brought by trustees of jointly administered, multi-employer benefit funds under Section 502 and 515 of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §§ 1132 and 1145, and Section 301(a) of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185(a), to compel an audit and collect delinquent contributions, interest, audit assessments and late payment assessments against defendants MLS Concrete, LLC and Charles Tyner, jointly and severally. Before the Court is plaintiffs' motion for partial default judgment, filed on January 12, 2010, and the Report and Recommendation of Magistrate Judge Donald A. Scheer, filed on March 4, 2010. The magistrate judge's report and recommendation recommended that plaintiff's motion be granted and that partial judgment of default be entered against both defendants requiring them to submit monthly contribution reports and benefit contributions for the period of August 2007 to the present, produce payroll and other records for the period of July 2007 to the present, and pay attorneys fees and costs. The Magistrate Judge also notified the

parties that any objections must be filed within fourteen days of service. No party has filed objections to the report and recommendations.

The Court's standard of review for a magistrate judge's report and recommendation depends upon whether a party files objections. If a party does not object to the report and recommendation, the Court does not need to conduct a review by any standard. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Because neither party filed timely objections to Magistrate Judge Scheer's report and recommendation, see 28 U.S.C. § 636(B)(1)(c); Fed. R. Civ. P. 6(e), this Court need not and will not conduct a review.

ACCORDINGLY, IT IS HEREBY ORDERED that the Report and Recommendation [docket entry 13] is **ACCEPTED** and **ADOPTED** as the opinion of this Court.

IT IS FURTHER ORDERED that plaintiffs' motion for partial default judgment [docket entry 9] is **GRANTED**.

IT IS FURTHER ORDERED AND ADJUDGED that defendants MLS Concrete, LLC and Charles Tyner, jointly and severally, shall submit monthly contribution reports and benefit contributions for the period of August 2007 to the present.

IT IS FURTHER ORDERED AND ADJUDGED that Defendants MLS Concrete, LLC and Charles Tyner, jointly and severally, shall produce the payroll and other records sought by plaintiffs to perform an audit for the period of July 2007 to present, including but not limited to: (a) records showing each employee's social security number, occupation, straight time and overtime hours worked, rate of pay, gross pay, FICA deductions, withholding tax deductions and other deductions and net pay, time and clock records; (b) all W-2 and W-3 forms filed for each year; (c) all 1099 and 1096 forms filed for each year; (d) all 941 forms for the current year; (e) contribution reports for all trades; (f) payroll and

non-payroll check registers; and (g) list of jobs, geographical areas, dates worked and records of hours worked by employees on a by-project basis.

IT IS FURTHER ORDERED AND ADJUDGED that plaintiffs shall recover \$2,607.50 in attorneys fees and costs.

IT IS FURTHER ORDERED AND ADJUDGED that this Court retains jurisdiction to issue an amended or supplemental default judgment to award plaintiffs the delinquencies found due in an audit and the attorneys fees and costs incurred by plaintiffs in amending the default judgment or obtaining a supplemental judgment.

SO ORDERED.

s/Stephen J. Murphy, III
STEPHEN J. MURPHY, III
United States District Judge

Dated: April 12, 2010

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on April 12, 2010, by electronic and/or ordinary mail.

Alissa Greer
Case Manager