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\*\*E-Filed 10/28/2009\*\*

4 Attorney for Plaintiffs

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 8 UNITED STATES DISTRICT COURT  
 9 NORTHERN DISTRICT OF CALIFORNIA

10 BOB TRAGNI AND WILLIAM T. )  
 BARROW, AS TRUSTEES OF THE )  
 11 INTERNATIONAL BROTHERHOOD OF )  
 ELECTRICAL WORKERS LOCAL 332 )  
 12 HEALTH AND WELFARE AND PENSION )  
 TRUST FUNDS, NEBE, JEIF, NECA )  
 13 SERVICE CHARGE, NECA, DUES )  
 CHECK OFF AND APPRENTICESHIP )  
 14 TRAINING TRUST FUNDS,

CASE NO.: C09-04988 RS

REQUEST FOR CONDITIONAL  
 DISMISSAL PENDING PAYMENT IN  
 FULL UNDER SETTLEMENT  
 AGREEMENT AND ORDER  
 THEREON

15 Plaintiffs,

16 vs.

17 SOUTHER ELECTRIC INC., A California )  
 Corporation,


18 Defendants.  
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20 All parties having appeared and executed a Mutual Release and Settlement of Claims, the  
 21 parties hereby request that the Court order a conditional dismissal of the entire action. The  
 22 dismissal is conditional upon payment in full under the settlement agreement attached hereto as  
 23 Exhibit "A". The court shall retain jurisdiction in this matter. In the event Defendant defaults  
 24 in performance of the settlement agreement or payment schedule, judgment shall be entered  
 25 upon ten (10) days' written notice to Defendant, and a declaration filed by Plaintiffs' attorney  
 26 as to default by the Defendant. Pursuant to the stipulation of the parties, the judgment to be  
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1 entered shall be for the balance owed in contributions for the period April, 2009 - July 30, 2009  
 2 in the amount of \$49,684.05, attorney's fees of \$864.25, Costs of \$350.00, and Liquidated  
 3 damages for the months of December 2006 - October 2008 and January 2009 - July 2009 in the  
 4 amount of \$63,731.63, plus current contributions due, less any amounts paid in accordance with  
 5 the Mutual Release and Settlement of Claims

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Dated: 10-27-2009

  
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 SUE CAMPBELL  
 Attorney for Plaintiffs

Dated: 10/19/2009

SOUTHER ELECTRIC INC.,  
 a California Corporation  
 By:   
 \_\_\_\_\_  
 MICHAEL P. QUINLIVAN, Attorney

**ORDER**


In accordance with the settlement and request of the parties, and good cause appearing therefor,

IT IS HEREBY ORDERED that a conditional dismissal with prejudice of the entire action be entered. The dismissal is conditional upon payment in full under the settlement agreement attached hereto as Exhibit "A" and for the Contributions due and unpaid to the TRUST FUNDS for the period September 2009 - June 2011. The Court shall retain jurisdiction over this matter. In the event Defendant defaults in performance of the settlement agreement or payment schedule, and upon ten (10) days' written notice to Defendant, and a declaration filed by Plaintiffs' attorney as to default by the Defendant, pursuant to the parties' stipulation, the Court authorizes entry of judgment for the balance owed in contributions for the period April, 2009 - July 30, 2009 in the amount of \$49,684.05, attorney's fees of \$864.25, Costs of \$350.00, and Liquidated damages for the months of December 2006 - October 2008 and January 2009 - July

1 2009 in the amount of \$63,731.63, less any amounts paid in accordance with the Mutual Release  
 2 and Settlement of Claims. The clerk shall close the file. It may be re-opened on application by  
 3 a party contemporaneously with a request to enter judgment pursuant to the stipulation for entry  
 4 of judgment.

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Dated: 10/28/2009 \_\_\_\_\_

  
 U.S. DISTRICT COURT JUDGE

**MUTUAL RELEASE  
AND  
SETTLEMENT OF CLAIMS**

The parties to this Agreement are:

1. SOUTHER ELECTRIC INC., A California Corporation (hereinafter "Souther").
2. BOB TRAGNI AND WILLIAM T. BARROW, AS TRUSTEES OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 332 HEALTH AND WELFARE AND PENSION TRUST FUNDS, NEBF, JEIF, NECA SERVICE CHARGE, NECA, DUES CHECK OFF AND APPRENTICESHIP TRAINING TRUST FUNDS (hereinafter "THE TRUST FUNDS").

In consideration of the mutual promises and covenants of the parties herein contained, and for the payment of \$77,647.37 payable as hereinafter provided, by Souther to THE TRUST FUNDS, the parties agree as follows:

1. Souther shall make all payments on the Contributions due and unpaid to the TRUST FUNDS for the period May 2009 - August 2009 in the amount of \$49,684.05 on or before December 31, 2009.

2. Souther shall also pay \$27,963.32 representing reduced liquidated damages of \$25,000.00 for the months December 2006 - October 2008 and January 2009 - July 2009, costs of suit in the amount of \$763.32, and attorney fees in the amount of \$2,200.00, in 30 equal installments of \$1,864.22 beginning on December 31, 2009 and ending June 30, 2011.

3. Any modification of payments must be made in writing and agreed to by both the Trust Funds and Souther.

IT IS FURTHER AGREED that Souther shall make payments of all ongoing amounts to become due to the Trust Funds pursuant to contract between Souther and Trust Funds for covered hours worked by defendant employees commencing with payment for September hours due on or before October 15, 2009 and continuing until the full amount of the reduced judgment as set forth above is paid. Checks will be made payable to the I.B.E.W. Local 332 Employee Benefit Trust Fund and sent to Sue Campbell: 1155 N. First St., Suite 101 San Jose, CA 95112.

IT IS FURTHER AGREED by the parties hereto that upon failure of the Defendant to make any of their monthly contribution payments pursuant to the collective bargaining agreement in the timely manner as required above, and pursuant to the terms of this stipulation as set forth above, the stipulated judgment attached as Exhibit "A" shall be entered in the amount set forth below:

A. Contributions due and unpaid to the TRUST FUNDS for the

period May 2009 - August 2009 in the amount of \$49,684.05, less any payments made.

- B. Liquidated damages due and unpaid to the TRUST FUNDS for the months of December 2006 - October 2008 in the amount of \$44,348.49, and January 2009 - July 2009 in the amount of \$19,383.14, for a total in liquidated damages of \$63,731.63.
- C. Attorney's fees due pursuant to contract in the amount of \$864.25.
- D. Costs of suit incurred in this action in the amount of \$350.00.
- E. Contributions due from September 15, 2009, through June 30, 2011, reduced by any offsets for payments made.
- F. A total judgment of \$114,629.93, plus current contributions due.

Said Judgment shall issue without notice to Souther, upon the filing of a declaration by Trust Funds' attorney stating that a default has occurred.

Upon payment in full of the entire \$77,647.37, the TRUST FUNDS shall file an Acknowledgment of Satisfaction of Judgment in the lawsuit filed in the U.S. District Court, Northern District of California, case number C09-04988 RS entitled BOB TRAGNI AND WILLIAM T. BARROW, AS TRUSTEES OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 332 HEALTH AND WELFARE AND PENSION TRUST FUNDS, NEBF, JEIF, NTECA SERVICE CHARGE, NECA, DUES CHECK OFF AND APPRENTICESHIP TRAINING TRUST FUNDS vs. SOUTHER

ELECTRIC, INC., a California Corporation and shall provide a file endorsed copy of that satisfaction to Michael Quinlivan, attorney for Defendant.

Upon payment in full of the entire \$77,647.37, the TRUST FUNDS shall also file an Acknowledgment of Satisfaction of Judgment in the lawsuit filed in the U.S. District Court, Northern District of California, case number: C09-00032 RS entitled BOB TRAGNI AND WILLIAM T. BARROW, AS TRUSTEES OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 332 HEALTH AND WELFARE AND PENSION TRUST FUNDS, NEBF, JEIF, NECA SERVICE CHARGE, NECA, DUES CHECK OFF AND APPRENTICESHIP TRAINING TRUST FUNDS vs. SOUTHER ELECTRIC, INC., a California Corporation and shall provide a file endorsed copy of that satisfaction to Michael Quinlivan, attorney for Defendant.

This Stipulation covers the delinquent amounts due to the Plaintiffs for the time period December 2006 - December 2008, and January 2009 - June 30, 2011 only, and does not include any amounts for any other time period that the collective bargaining agreement is in effect between the signatory parties. By entering into this Stipulation, Trust Funds do not waive their right to audit the employer for the above time period, or any other time period, and to collect through a subsequent legal action any additional monies found by an audit to be delinquent because of unreported hours.

5. IT IS FURTHER AGREED AS FOLLOWS:

A. It is understood and agreed that this is a compromise settlement of a disputed claim, and that the payment of consideration for this release does not constitute

and shall not be construed for any purpose as an admission of liability by SOUTHERN ELECTRIC, INC., a California Corporation or for that matter by THE TRUST FUNDS.

B. This Mutual Release and Settlement of Claims Agreement constitutes the entire agreement between the parties hereto, and all other prior agreements, arrangements or understandings, oral or written, express or implied, are merged into, and superseded by the terms of this Mutual Release and Settlement of Claims Agreement.

C. Each of the persons executing this Mutual Release and Settlement of Claims Agreement on behalf of each of the parties thereto warrants that he has full power and authority to do so on behalf of the party or person for whom he is signing, and that no other individual or corporate authorization is necessary.

D. This agreement may be executed in multiple counterparts, each of which shall constitute an original, and all of which taken together shall constitute one and the same agreement.



EACH UNDERSIGNED DECLARES THAT THIS MUTUAL RELEASE AND SETTLEMENT OF CLAIMS AGREEMENT HAS BEEN CAREFULLY READ AND IS FULLY UNDERSTOOD.

DATED: 9/28/09

SOUTHER ELECTRIC, INC.  
By: Raymond South

DATED: 10/26/09

I.B.E.W. LOCAL, 332 EMPLOYEE  
BENEFIT TRUST FUNDS  
By: Robert L. Tyni

DATED: \_\_\_\_\_

By: \_\_\_\_\_

EACH UNDERSIGNED DECLARES THAT THIS MUTUAL RELEASE AND SETTLEMENT OF CLAIMS AGREEMENT HAS BEEN CAREFULLY READ AND IS FULLY UNDERSTOOD.

DATED: 9/28/09

SOUTHER ELECTRIC, INC.

By: Raymond South

I.B.E.W. LOCAL 332 EMPLOYEE BENEFIT TRUST FUNDS

DATED: \_\_\_\_\_

By: \_\_\_\_\_

DATED: 10/27/09

By: [Signature]