

1 ALEXANDER B. CVITAN (SBN 81746), and
 2 MARSHA M. HAMASAKI (SBN 102720), Members of
 3 REICH, ADELL & CVITAN
 A Professional Law Corporation
 3 3550 Wilshire Boulevard, Suite 2000 E-FILED 11/06/08
 Los Angeles, California 90010-2421
 4 Telephone: (213) 386-3860
 Facsimile: (213) 386-5583
 5 E-Mails: alc@rac-law.com; marshah@rac-law.com

6 Attorneys for Construction Laborers Trust Funds for Southern
 California Administrative Company, LLC

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8 UNITED STATES DISTRICT COURT

9 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

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11 CONSTRUCTION LABORERS TRUST FUNDS]	CASE NUMBER
FOR SOUTHERN CALIFORNIA]	
12 ADMINISTRATIVE COMPANY, a Delaware]	CV 08-02190 PSG(CTx)
limited liability company,]	
13]	[PROPOSED] FINDINGS AND FACT
Plaintiff,]	AND CONCLUSIONS OF LAW; and
14]	ORDER RE CIVIL CONTEMPT
vs.]	
15]	
16 CELIA BEATRIZ DOMENECH, an]	HEARING
individual doing business as B C M]	DATE: NOVEMBER 3, 2008
17 CO., B C M CLEANING MAINTENANCE]	TIME: 1:30 P.M.
CO., B C M CLEANING AND]	PLACE: COURTROOM 790
18 MAINTENANCE, and B C M BUILDING]	ROYBAL FEDERAL
AND MAINTENANCE CO., and DOE 1]	BUILDING
19 through DOE 5, inclusive,]	
Defendants.]	
20]	

21 **I. FACTUAL BACKGROUND**

22 1. This action was brought by Plaintiff, CONSTRUCTION

23 LABORERS TRUST FUNDS FOR SOUTHERN CALIFORNIA ADMINISTRATIVE

24 COMPANY, a Delaware limited liability company on behalf of

25 LABORERS HEALTH AND WELFARE TRUST FUND FOR SOUTHERN CALIFORNIA,

26 CONSTRUCTION LABORERS PENSION TRUST FOR SOUTHERN CALIFORNIA,

27 CONSTRUCTION LABORERS VACATION TRUST FOR SOUTHERN CALIFORNIA,

28 LABORERS TRAINING AND RE-TRAINING TRUST FUND FOR SOUTHERN

1 CALIFORNIA, FUND FOR CONSTRUCTION INDUSTRY ADVANCEMENT, CENTER FOR
2 CONTRACT COMPLIANCE and LABORERS CONTRACT ADMINISTRATION TRUST
3 FUND FOR SOUTHERN CALIFORNIA (collectively, "TRUST FUNDS"),
4 against Defendant, CELIA BEATRIZ DOMENECH, an individual doing
5 business as B C M CO., B C M CLEANING MAINTENANCE CO., B C M
6 CLEANING AND MAINTENANCE, and B C M BUILDING AND MAINTENANCE CO.
7 ("EMPLOYER").

8 2. An Interlocutory Order for Accounting was entered by the
9 Court on July 31, 2008 against EMPLOYER. The Interlocutory Order
10 requires EMPLOYER to produce her books and records to the TRUST
11 FUNDS for the period from January 2007 through date of the audit
12 which will allow TRUST FUNDS to accurately determine the full
13 amount of contributions due by the EMPLOYER to the TRUST FUNDS and
14 any damages to the TRUST FUNDS for failure to pay any such
15 contributions.

16 3. The Court's Interlocutory Order for Accounting requires
17 EMPLOYER to submit to the audit within fifteen (15) days of
18 service of the Court's Order, and produce the following records:

19 A. All payroll and employee documents including, but
20 not limited to, EMPLOYER'S payroll journals,
21 employees earning records, certified payrolls,
22 payroll check books and stubs, canceled payroll
23 checks, payroll time cards, state and federal
24 payroll tax returns, labor distribution journals,
25 any other documents reflecting the number of hours
26 which EMPLOYER'S, employees worked, their names,
27 social security numbers, addresses, job
28 classifications and the projects on which the

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employees performed their work.

B. All EMPLOYER'S job files for each contract, project or job on which EMPLOYER worked, including all documents, agreements, and contracts between EMPLOYER, and any general contractor, subcontractor, builder and/or developer, field records, job records, notices, project logs, supervisor's diaries or notes, employees diaries, memorandum, releases and any other documents which related to the supervision of EMPLOYER'S employees and the projects on which they performed their work.

C. All EMPLOYER'S, documents related to cash receipts, including but not limited to, the cash receipts journals, accounts receivable journal, accounts receivable subsidiary ledgers and billing invoices for all contracts, projects or jobs on which EMPLOYER worked.

D. All EMPLOYER'S, bank statements for all checking, savings and investment accounts.

E. All EMPLOYER'S documents related to cash disbursements, including but not limited to, vendors' invoices, cash disbursement journal, accounts payable journals, check registers, and all other documents which indicate cash disbursements.

F. All collective bargaining agreements between EMPLOYER and any trade union and all Monthly Report Forms submitted by EMPLOYER to any union trust

1 fund.

2 4. The Court's Interlocutory Order for Accounting contains
3 the following warning in bold type to EMPLOYER: "THE FAILURE OF
4 EMPLOYER TO COMPLY WITH THIS ORDER MAY BE GROUNDS FOR CONTEMPT OF
5 COURT."

6 5. On August 20, 2008, the Court's Interlocutory Order was
7 personally served on EMPLOYER and proof of service of said Order
8 was filed with the Court on September 23, 2008.

9 6. As of November 3, 2008, EMPLOYER has not contacted TRUST
10 FUNDS or their counsel with regard to the audit of her records,
11 and has failed to comply with the Court's Interlocutory Order for
12 Accounting.

13 7. Upon application by Plaintiff for an Order To Show Cause
14 Re Contempt with regard to EMPLOYER'S failure to obey the Court's
15 Interlocutory Order for Accounting, and with notice to EMPLOYER,
16 the Court issued an Order to Show Cause re Contempt and set the
17 contempt hearing for November 3, 2008. The Court's Order to
18 Show Cause was served by mail on EMPLOYER on September 30, 2008
19 and personally served on EMPLOYER on October 2, 2008; however,
20 EMPLOYER failed to appear for the hearing. Proofs of service by
21 mail and by personal service were filed with the Court on
22 September 30, 2008 and October 9, 2008.

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24 **II. FINDINGS**

25 1. EMPLOYER was personally served with the Interlocutory
26 Order for Accounting which required EMPLOYER'S compliance with the
27 Order within (15) fifteen days of service. The Court's
28 Interlocutory Order for Accounting included a warning to EMPLOYER

1 that EMPLOYER'S failure to comply with the Court's Order may be
2 grounds for contempt of Court but EMPLOYER failed to obey the
3 Court's Order.

4 2. EMPLOYER failed to comply with the Court's Interlocutory
5 Order for Accounting.

6 3. EMPLOYER was personally served with the Court's Order to
7 Show Cause re Contempt; however, EMPLOYER failed to appear for the
8 hearing.

9 4. EMPLOYER has not communicated with the TRUST FUNDS or
10 their counsel with regard to the audit of her records, and has not
11 shown cause why she should not be held in contempt for failing to
12 obey the Court's Interlocutory Order for Accounting.

13 14 III. CONCLUSIONS OF LAW

15 1. Civil contempt occurs when a party fails to comply with
16 a court order after having notice of the order. General Signal
17 Corporation v. Donallco, Inc., 787 F.2d 1276, 1379 (9th Cir.
18 1986), United States v. Rycander, 714 F.2d 996, 1003 (9th Cir.
19 1983), cert. denied 467 U.S. 1209, 104 S.Ct. 2398, 81 L.Ed.2d 355
20 (1984).

21 2. District Courts have the power to punish disobedience to
22 court orders by both civil and criminal contempt. United States
23 v. Rose, 806 F.2d 931 (9th Cir. 1986).

24 EMPLOYER was personally served with this Court's
25 Interlocutory Order for Accounting and has failed and refused to
26 obey the Court's Order. Further, EMPLOYER, after notice and
27 personal service of the Court's Order to Show Cause re Contempt,
28 has failed to appear before this Court to show cause why she

1 should not be held in contempt for her refusal to obey the Court's
2 Order. The Court therefore finds that the EMPLOYER is in civil
3 contempt for her refusal to obey the Court's Interlocutory Order
4 for Accounting.

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6 **III. ORDER RE CIVIL CONTEMPT**

7 Based upon the foregoing findings of fact and conclusions of
8 law and good cause appearing therefor,

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that:

10 1. The EMPLOYER is in civil contempt for failing and
11 refusing to obey this Court's Interlocutory Order for Accounting
12 entered on July 31, 2008;

13 2. EMPLOYER is Ordered to pay to TRUST FUNDS the sum of
14 \$1,000.00 per day from the date of the service of this Order,
15 until EMPLOYER fully complies with the Court's Interlocutory Order
16 for Accounting and produces her records and submits to an audit by
17 TRUST FUNDS; and

18 3. If EMPLOYER continues to fail to comply with this
19 Court's Order, TRUST FUNDS may seek further Order(s) from this
20 Court.

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22 DATED: 11/06/08

PHILIP S. GUTIERREZ
HON. PHILIP S. GUTIERREZ, Judge of
the United States District Court
Central District of California

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25 PRESENTED BY:
26 REICH, ADELL & CVITAN
A Professional Law Corporation

27 By: _____ /s/
28 MARSHA M. HAMASAKI
Attorneys for Plaintiff