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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

THOMAS E. PEREZ,
Secretary of Labor,
United States Department of Labor,

Plaintiff,

v.

SCOTT BRAIN, et al.

Defendants.

Case No. CV 14-3911-JAK-AGRx

**CONSENT JUDGMENT AND
ORDER WITH DEFENDANTS
DAVID ALLEN, JAIME BARTON,
FRANK CROUCH, MARCOS
ENRIQUEZ, PHIL SALERNO,
MAC TARROSA, BILLY LUJAN,
ENRICO PRIETO, SCOTT BERG,
LARRY NODLAND, JESSE
MENDEZ, FITZGERALD
JACOBS, CEMENT MASONS
SOUTHERN CALIFORNIA
ADMINISTRATIVE
CORPORATION, ROBERT
NORLING , ZENITH AMERICAN
SOLUTIONS, BILL LEE, the
CEMENT MASONS SO. CAL.
HEALTH AND WELFARE FUND
TRUST, the CEMENT MASONS
SO. CAL. PENSION TRUST, the
ELEVEN COUNTIES CEMENT
MASONS VACATION SAVINGS
PLAN TRUST, the CEMENT
MASONS JOINT
APPRENTICESHIP TRUST, and
the CEMENT MASONS SO. CAL.
INDIV. RETIREMENT ACCOUNT
DEFINED CONTRIBUTION
TRUST**

1
2 Plaintiff THOMAS E. PEREZ, Secretary of Labor, United States Department of
3 Labor (the “Secretary”), pursuant to his authority under Sections 502(a)(2) and (5) of the
4 Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C.
5 §§ 1132(a)(2) and (5), has filed a Complaint, First Amended Complaint and Second
6 Amended Complaint (collectively “Complaint”) against DAVID ALLEN, JAIME
7 BARTON, FRANK CROUCH, MARCOS ENRIQUEZ, PHIL SALERNO, MAC
8 TARROSA, BILLY LUJAN, ENRICO PRIETO, SCOTT BERG, LARRY NODLAND,
9 JESSE MENDEZ, FITZGERALD JACOBS, ZENITH AMERICAN SOLUTIONS,
10 BILL LEE, the CEMENT MASONS SO. CAL. HEALTH AND WELFARE FUND
11 TRUST, the CEMENT MASONS SO. CAL. PENSION TRUST, the ELEVEN
12 COUNTIES CEMENT MASONS VACATION SAVINGS PLAN TRUST, the
13 CEMENT MASONS JOINT APPRENTICESHIP TRUST, the CEMENT MASONS
14 SO. CAL. INDIV. RETIREMENT ACCOUNT DEFINED CONTRIBUTION TRUST¹
15 (collectively “Settling Defendants”), CEMENT MASONS SOUTHERN CALIFORNIA
16 ADMINISTRATIVE CORPORATION and ROBERT NORLING, among others. The
17 Settling Defendants have answered the Complaint and have admitted to the jurisdiction
18 of this Court over them and the subject matter of this action. The Parties expressly
19 waive Findings of Fact and Conclusions of Law.

20 The Secretary and Settling Defendants (collectively “Parties”) have agreed to
21 resolve all matters in controversy in this action between them and said Parties do now
22 consent to entry of this Consent Judgment and Order by this Court in accordance
23 therewith. The Parties further agree that this Consent Judgment and Order shall fully

24 _____
25 ¹ The CEMENT MASONS SO. CAL. HEALTH AND WELFARE FUND TRUST, THE CEMENT
26 MASONS SO. CAL. PENSION TRUST, THE ELEVEN COUNTIES CEMENT MASONS
27 VACATION SAVINGS PLAN TRUST, THE CEMENT MASONS JOINT APPRENTICESHIP
28 TRUST, AND THE CEMENT MASONS SO. CAL. INDIV. RETIREMENT ACCOUNT DEFINED
CONTRIBUTION TRUST (collectively referred to as the “Southern California Cement Masons Trust
Funds”) are named as Defendants pursuant to Rule 19(a) of the Federal Rules of Civil Procedure, solely
to ensure that complete relief can be granted.

1 settle all claims of the Secretary asserted against them, and them only, in the Complaint
2 filed in this matter. Settling Defendants neither admit nor deny the allegations alleged in
3 the Complaint or contained herein. Upon consideration of the record herein, and as
4 agreed to by the Parties, the Court finds that it has jurisdiction to enter this Consent
5 Judgment and Order.

6 **IT IS HEREBY ORDERED, ADJUDGED, and DECREED that:**

7 1. Defendants DAVID ALLEN, JAIME BARTON, FRANK CROUCH,
8 MARCOS ENRIQUEZ, PHIL SALERNO, MAC TARROSA, BILLY LUJAN,
9 ENRICO PRIETO, SCOTT BERG, LARRY NODLAND, JESSE MENDEZ,
10 FITZGERALD JACOBS, ZENITH AMERICAN SOLUTIONS, and BILL LEE shall,
11 within thirty days from the entry of this Consent Judgment and Order by this Court, pay
12 the sum of \$630,000, less lawful deductions, to Cheryle Ann Robbins, Cory Rice and
13 Louise Bansmer and judgment is hereby entered against them jointly and severally in
14 such amount. Payments shall be made as follows:

15 a. Cheryle Ann Robbins shall be paid \$400,000 as lost wages, less regular
16 lawful payroll deductions such as income tax withholdings and Social Security
17 contributions;

18 b. Cory Rice shall be paid \$56,000 as lost wages, less regular lawful payroll
19 deductions such as income tax withholdings and Social Security contributions; and

20 c. Louise Bansmer shall be paid \$174,000, \$67,000 as lost wages and
21 \$107,000 as consequential damages in the form of lost Social Security benefits, less
22 regular lawful payroll deductions such as income tax withholdings and Social Security
23 contributions.

24 d. Any actions taken by the Defendants to assure proper reporting of these
25 payments to local, state and federal taxing authorities and/or the California Employment
26 Development Department shall not be viewed by the Secretary as being retaliatory or in
27 violation of any legal duty.

1 e. Defendants SOUTHERN CALIFORNIA CEMENT MASONS TRUST
2 FUNDS and ZENITH AMERICAN SOLUTIONS shall ensure that both the employee
3 and the employer portion of payroll taxes or payments are paid and any Social Security
4 Administration forms necessary are filed to ensure that the backpay portion of the award
5 is allocated to the appropriate calendar periods in which Cheryle Ann Robbins, Cory
6 Rice and Louise Bansmer would have earned the compensation. See IRS Publication
7 957: Reporting Back Pay and Special Wage Payments to the Social Security
8 Administration.

9 f. Proof of payments required under this paragraph must be submitted within
10 fifteen days of when such payments are made and shall be provided to:

11 Regional Director
12 U.S. Department of Labor
13 Employee Benefits Security Administration
14 1055 E. Colorado Blvd., Suite 200
15 Pasadena, CA 91106-2357
16

17 2. In addition to the payment to Cheryle Ann Robbins required under
18 Paragraph 1(a), within sixty days from the entry of this Consent Judgment and Order by
19 this Court, Defendants, JAIME BARTON, MARCOS ENRIQUEZ, PHIL SALERNO,
20 MAC TARROSA, BILLY LUJAN, ENRICO PRIETO, SCOTT BERG, LARRY
21 NODLAND JESSE MENDEZ, and FITZGERALD JACOBS shall bring a Motion
22 before the Joint Board of the Southern California Cement Masons Trust Funds to accept
23 the recommendation of the Pension Committee to the Cement Masons So. Cal. Pension
24 Trust made on April 16, 2015 to credit Cheryle Ann Robbins' pension account with
25 service credits ("Service Credits") for the period May 1, 2012 through and including
26 June 30, 2016 as settlement of this lawsuit. The Motion shall read as follows:
27 "CEMENT MASONS SO. CAL. HEALTH AND WELFARE FUND TRUST,
28 CEMENT MASONS SO. CAL. PENSION TRUST, CEMENT MASONS JOINT

1 APPRENTICESHIP TRUST and CEMENT MASONS SO. CAL. INDIV.
2 RETIREMENT ACCOUNT DEFINED CONTRIBUTION TRUST will each contribute
3 its share of \$65,000 (in relative overhead percentages) to CEMENT MASONS SO.
4 CAL. PENSION TRUST to be used to grant Service Credits to Cheryle Ann Robbins of
5 four years and two months under the Pension Plan sponsored by CEMENT MASONS
6 SO. CAL. PENSION TRUST and CEMENT MASONS SO. CAL. PENSION TRUST
7 will grant her that credit.” The Secretary affirms that such a vote by the Joint Board to
8 award Cheryle Ann Robbins Service Credits as referenced in this paragraph shall not be
9 considered by the Secretary as a breach of fiduciary duty under ERISA by any voting
10 Trustee of the Southern California Cement Masons Trust Funds.

11 3. In consideration of payments and credits required under Paragraphs 1 and 2,
12 the Secretary shall not seek further payments or monies from Defendants DAVID
13 ALLEN, JAIME BARTON, FRANK CROUCH, MARCOS ENRIQUEZ, PHIL
14 SALERNO, MAC TARROSA, BILLY LUJAN, ENRICO PRIETO, SCOTT BERG,
15 LARRY NODLAND, SCOTT BRAIN, JAIME BRICENO, FITZGERALD JACOBS,
16 JESSE MENDEZ, ZENITH AMERICAN SOLUTIONS, BILL LEE, and ROBERT
17 NORLING in this matter. The Secretary’s monetary claims against Defendants SCOTT
18 BRAIN and JAIME BRICENO shall be deemed satisfied while the rest of the
19 Secretary’s claims against these and other defendants not included in this Consent
20 Judgment and Order are wholly unaffected.

21 4. All Settling Defendants except for ZENITH AMERICAN SOLUTIONS
22 and BILL LEE are permanently enjoined and restrained from violating the provisions of
23 Title I of ERISA, 29 U.S.C. §§ 1001-1191c.

24 5. Defendant ZENITH AMERICAN SOLUTIONS and BILL LEE are
25 permanently enjoined and restrained from violation Section 510 of ERISA, 29 U.S.C. §
26 1140.

27 6. Settling Defendants specifically recognize that employees, trustees,
28 administrators, union members, union staff and officers, participants and beneficiaries of

1 the Cement Masons Trust Funds, and others have an absolute right to participate in a
2 Department of Labor investigation, report conduct to the Department of Labor that they
3 believe violates ERISA, 29 U.S.C. §§ 1001-1191c, and report conduct internally that
4 they believe violates ERISA, 29 U.S.C. §§ 1001-1191c, and Settling Defendants are
5 permanently enjoined and restrained from discriminating and/or retaliating against
6 anyone who exercises any of these absolute rights.

7 7. Within sixty days following the entry of this Consent Judgment and Order
8 by this Court, Defendants DAVID ALLEN, JAIME BARTON, FRANK CROUCH,
9 MARCOS ENRIQUEZ, PHIL SALERNO, MAC TARROSA, BILLY LUJAN,
10 ENRICO PRIETO, SCOTT BERG, LARRY NODLAND, JESSE MENDEZ and
11 FITZGERALD JACOBS shall each complete eight hours of education and training on
12 the duties and responsibilities of fiduciaries and trustees to ERISA-covered plans,
13 including education and training on ERISA Section 510, 29 U.S.C. § 1140. Such
14 training shall be provided by the Secretary.

15 8. Within fifteen days following the entry of this Consent Judgment and Order
16 by this Court, Defendants JAIME BARTON, MARCOS ENRIQUEZ, PHIL SALERNO,
17 MAC TARROSA, BILLY LUJAN, ENRICO PRIETO, SCOTT BERG, LARRY
18 NODLAND, JESSE MENDEZ, FITZGERALD JACOBS and ROBERT NORLING
19 shall bring a Motion before the Joint Board of Trustees to pass a resolution requesting
20 Scott Brain voluntarily resign from all trustee positions he holds. While Defendants
21 DAVID ALLEN and FRANK CROUCH are not currently Trustees on the Joint Board
22 of Trustees, they support the resolution.

23 9. Defendants DAVID ALLEN, JAIME BARTON, FRANK CROUCH,
24 MARCOS ENRIQUEZ, PHIL SALERNO, MAC TARROSA, BILLY LUJAN,
25 ENRICO PRIETO, SCOTT BERG, LARRY NODLAND, JESSE MENDEZ,
26 FITZGERALD JACOBS and ROBERT NORLING make the following statement as
27 part of this Consent Judgment and Order: “Based on what we now know and understand
28 regarding the circumstances surrounding the vote to place Cheryle Robbins on paid

1 administrative leave on November 18, 2011, it is apparent that such actions were taken
2 by some of the defendants because Cheryle Robbins cooperated with a Department of
3 Labor investigation into potential violations of the Employee Retirement Income
4 Security Act (“ERISA”) by Scott Brain or because she participated in an effort to
5 complain about conduct by Scott Brain that she believed was unlawful, in violation of
6 section 510 of ERISA and that such actions ultimately lead to Ms. Robbins not being
7 hired by Zenith when the Administrative Corporation dissolved and all employees were
8 terminated and all employees were hired by Zenith except Ms. Robbins.”

9 10. Within sixty days following the entry of this Consent Judgment and Order
10 by this Court, all employees of Defendant ZENITH AMERICAN SOLUTIONS in
11 Arcadia, California, including Defendant BILL LEE shall each complete one to two
12 hours of education and training on ERISA Section 510, 29 U.S.C. § 1140. Such training
13 shall be provided by the Secretary.

14 11. Within thirty days following the entry of this Consent Judgment and Order
15 by this Court, Defendant ZENITH AMERICAN SOLUTIONS shall provide all of its
16 employees located in California a notice of rights under ERISA Section 510, 29 U.S.C. §
17 1140. A copy of the notice is attached as Exhibit A.

18 12. The Secretary seeks no remedy from Defendants CEMENT MASONS SO.
19 CAL. HEALTH AND WELFARE FUND TRUST, the CEMENT MASONS SO. CAL.
20 PENSION TRUST, the ELEVEN COUNTIES CEMENT MASONS VACATION
21 SAVINGS PLAN TRUST, the CEMENT MASONS JOINT APPRENTICESHIP
22 TRUST, or the CEMENT MASONS SO. CAL. INDIV. RETIREMENT ACCOUNT
23 DEFINED CONTRIBUTION TRUST and such Defendants shall not be required to
24 further participate in this litigation except if ordered by the Court as deemed necessary to
25 ensure that complete relief in this matter can be granted. See Rule 19(a) of the Federal
26 Rules of Civil Procedure.

27 13. Within 15 days following the entry of this Consent Judgment and Order,
28 Defendant ROBERT NORLING shall bring a Motion before the Joint Board of the

1 Southern California Cement Masons Trust Funds calling for the adoption of an
2 investigation procedure previously agreed on by the Secretary and Defendant ROBERT
3 NORLING. Defendants JAIME BARTON, MARCOS ENRIQUEZ, PHIL SALERNO,
4 MAC TARROSA, BILLY LUJAN, ENRICO PRIETO, SCOTT BERG, LARRY
5 NODLAND, JESSE MENDEZ and FITZGERALD JACOBS shall support the Motion.

6 14. In consideration of the relief provided under this Consent Judgment and
7 Order, and specifically Paragraph 13, and pursuant to Federal Rule of Civil Procedure
8 41(a)(2), the Secretary, the Settling Defendants and Defendant CEMENT MASONS
9 SOUTHERN CALIFORNIA ADMINISTRATIVE CORPORATION request this Court
10 dismiss Defendant ROBERT NORLING from this action with prejudice.

11 15. In consideration of the relief provided under this Consent Judgment and
12 Order and the fact that Defendant CEMENT MASONS SOUTHERN CALIFORNIA
13 ADMINISTRATIVE CORPORATION is no longer an ongoing concern, pursuant to
14 Federal Rule of Civil Procedure 41(a)(2), the Secretary, the Settling Defendants and
15 Defendant ROBERT NORLING request this Court dismiss Defendant CEMENT
16 MASONS SOUTHERN CALIFORNIA ADMINISTRATIVE CORPORATION from
17 this action.

18 16. Settling Defendants, Defendants CEMENT MASONS SOUTHERN
19 CALIFORNIA ADMINISTRATIVE CORPORATION and ROBERT NORLING each
20 expressly waive any and all claims of any nature which they may have against the
21 Secretary, the United States Department of Labor, or any of its officers, agents,
22 attorneys, employees or representatives, arising out of, or in connection with, the
23 allegations contained in the Complaint in this action, any other proceedings or
24 investigation incident thereto, or based on the Equal Access to Justice Act, as amended.

25 17. The Parties, Defendants CEMENT MASONS SOUTHERN CALIFORNIA
26 ADMINISTRATIVE CORPORATION and ROBERT NORLING shall each bear their
27 own costs, expenses, and attorney's fees incurred to date in connection with any stage of
28

1 this proceeding, including but not limited to attorney's fees which may be available
2 under the Equal Access to Justice Act, as amended.

3 18. Nothing in this Consent Judgment and Order is binding on any
4 governmental agency other than the United States Department of Labor, Employee
5 Benefits Security Administration.

6 19. The parties understand and agree that this Consent Judgment does not
7 include a finding of liability on the part of the Settling Defendants and/or Norling and
8 for that reason cannot be used as means to establish liability in any other proceeding.

9 20. This Court retains jurisdiction over the Settling Defendants and over this
10 action for purposes of enforcing compliance with the terms of this Consent Judgment
11 and Order.

12 21. By signing their names to this Consent Judgment and Order, the Parties,
13 Defendants CEMENT MASONS SOUTHERN CALIFORNIA ADMINISTRATIVE
14 CORPORATION and ROBERT NORLING each represent that they are informed and
15 understand the effect and purpose of this Consent Judgment and Order.

16 22. Any person signing this Consent Judgment and Order on behalf of a party
17 expressly acknowledges and represents that he or she has the authority to sign for, and
18 legally bind, that party.

19 23. This Consent Judgment and Order may be executed in counterparts, each of
20 which shall be deemed to be an original, but all of which, taken together, shall constitute
21 one and the same instrument.

22 The Court directs the entry of this Consent Judgment and Order as a final order.

23 IT IS SO ORDERED.

24
25 Dated: August 24, 2015



26 _____
United States District Judge

1 For the Defendants:

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DAVID ALLEN

7/29/2015

Date

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JAIME BARTON

Date

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FRANK CROUCH

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MARCOS ENRIQUEZ

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PHIL SALERNO

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MAC TARROSA

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BILLY LUJAN

Date

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ENRICO PRIETO

Date

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SCOTT BERG

Date

1 For the Defendants:

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4 DAVID ALLEN

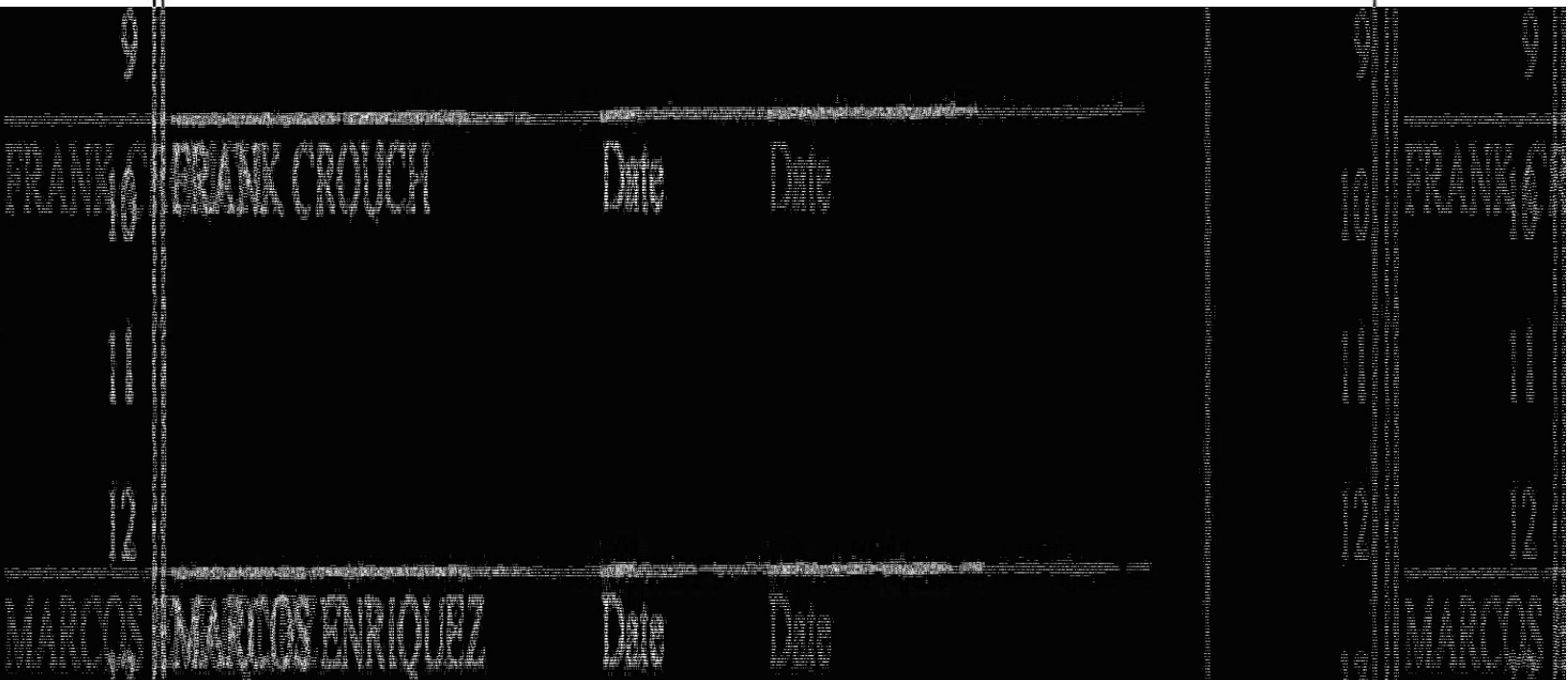
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7 JAMIE BARTON

7 7/29/15
Date

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24 ENRICO PRIETO

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27 SCOTT BERG

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Frank Crouch
FRANK CROUCH

July 31, 2015
Date

MARCOS ENRIQUEZ

Date

PHIL SALERNO

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MAC TARROSA

Date

BILLY LUJAN

Date

ENRICO PRIETO

Date

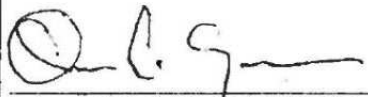
SCOTT BERG

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FRANK CROUCH

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July 31, 2015

MARCOS ENRIQUEZ

Date

PHIL SALERNO

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MAC TARROSA

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BILLY LUAN

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FRANK CROUCH

BILLY LIQUAN

ENRICO PRIETO

For the Defendant/Defendants:

FRANK CROUCH

Date

Date

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MARCOS ENRIQUEZ

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BILLY LUJAN

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Enriquez

7-15-75-15

ENRICO PRIETO

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For the Defendant:

FRANK CROUCH

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MARCOSENRIQUEZ

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BILLY LUAN

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ENRIQUE PRIETO

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Date

For the Defendant:

FRANK CROUCH

Date

Date

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MARCOSENRIQUEZ

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BILLY LUAN

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ENRIQUE PRIETO

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[Handwritten signature] 4/6-15 4/6-15

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CEMENT MASONRY CONTRACTORS

BILL LEE BILL LEE

Date

Date

CEMENT MASONRY CONTRACTORS SO. CAL.

CEMENT MASONRY CONTRACTORS UNION

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CEMENT MASONRY CONTRACTORS

BILL LEE

CEMENT MASONRY CONTRACTORS SO. CAL.

CEMENT MASONRY CONTRACTORS UNION

Christopher E. Parker, Esq.

Date

Date

Miller & Miller & Martin, PLLC

City 9100 City 9100

HEALTH AND WELFARE FUND

TRUST, CEMENT MASONRY ASSN. SO. CAL.

PENSION TRUST, BLINN COUNTIES

CEMENT MASONS VACATION

SAVINGS PLAN TRUST,

CEMENT MASONS JOINT

Christopher E. Parker, Esq.

Miller & Miller & Martin, PLLC

City 9100 City 9100

HEALTH AND WELFARE FUND

TRUST, CEMENT MASONRY ASSN. SO. CAL.

PENSION TRUST, BLINN COUNTIES

CEMENT MASONS VACATION

SAVINGS PLAN TRUST,

CEMENT MASONS JOINT

10/20/20

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ZENITH INVESTMENT MANAGEMENT

CEMENT MORTGAGE INVESTORS SO. CAL.

REALTY AND FUND

TRUST, CEMENT MORTGAGE INVESTORS SO. CAL.

ZENITH

CEMENT

REALTY

TRUST

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LARRY NODLAND

Date


JESSE MENDEZ

Date

FITZGERALD JACOBS

Date

ZENITH AMERICAN SOLUTIONS



8/6/2015
Date

Christopher E. Parker, Esq.
Miller & Martin, PLLC
Suite 2100
1180 West Peachtree Street, N.W.
Atlanta, GA 30309-3407
Attorneys for DEFENDANT
ZENITH AMERICAN SOLUTIONS


BILL LEE

8/6/15
Date

CEMENT MASONS SO. CAL
HEALTH AND WELFARE FUND
TRUST, CEMENT MASONS SO. CAL.
PENSION TRUST, ELEVEN COUNTIES
CEMENT MASONS VACATION
SAVINGS PLAN TRUST,
CEMENT MASONS JOINT
APPRENTICESHIP TRUST, and

9 PENSION TRUST, ELEVEN COUNTIES
10 CEMENT MASONS VACATION
11 SAVINGS PLAN TRUST,
12 CEMENT MASONS JOINT
13 APPRENTICESHIP TRUST, and
14 CEMENT MASONS SO. CAL INDIV.
15 RETIREMENT ACCOUNT
16 DEFINED CONTRIBUTION TRUST

17 CEMENT MASONS SOUTHERN
18 CALIFORNIA ADMINISTRATIVE
19 CORPORATION

20 *Kathleen Cahill Slaughter*

7/31/15
Date

21 Kathleen Cahill Slaughter
22 SEYFARTH SHAW LLP
23 560 Mission Street, 31st Floor
24 San Francisco, CA 94105-2930
25 Attorneys for Defendant CEMENT
26 MASONS SOUTHERN CALIFORNIA
27 ADMINISTRATIVE CORPORATION

28 _____
ROBERT NORLING

Date

9 JANET M. HEROLD
Regional Solicitor

10 *Danielle J*

11 DANIELLE L. JABERG
12 Counsel for ERISA

August 7, 2015
Date

13 EVAN H. NORDBY
14 Senior Trial Attorney

15 BRIAN J. SCHMIDT
16 Trial Attorney

17 NANCY STEFFAN
18 Trial Attorney
19

EXHIBIT A

NOTICE OF WHISTLEBLOWER RIGHTS

As an employee of Zenith American Solutions, you play an important role in administering employee benefit plans. These plans are governed by the federal Employee Retirement Income Security Act, frequently called ERISA.

From time to time, the federal government conducts investigations to determine whether benefit plans are complying with ERISA's provisions. You should know that **you have an absolute right to provide information to the government** in connection with these investigations. ERISA prohibits employers, including Zenith, or anyone else from taking action against you because you have cooperated with an investigation.

You also have the right to report unlawful conduct that you believe violates ERISA. One option you have is to report the conduct to the federal government. Alternatively, you may bring your concerns to the attention of a Zenith manager, Human Resources or the Legal Department. You may also anonymously contact the *ReportIt!* Hotline, which is administered by an independent party. Consistent with Zenith's policy on non-retaliation for good-faith reporting of complaints, ERISA prohibits employers, including Zenith, or anyone else from taking action against you because you have reported unlawful conduct.

If you believe that you have faced negative consequences for cooperating with an ERISA investigation or for reporting conduct that you believe violates ERISA, or if you want to report other unlawful conduct that you believe violates ERISA, you may file a complaint with the Department of Labor online at www.askebsa.dol.gov/WebIntake/Home.aspx or by calling (866) 444-3272. You may also report any concerns to the *Report It!* Hotline at (877) 778-5463 or online at www.reportit.net (Username: HealthPlan Password: ReportIt).