

1 B. The Secretary and Hardt (collectively, “the parties”) admit that the Court has
2 jurisdiction over this action pursuant to ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1), and that
3 venue lies in the United States District Court, Eastern District of California pursuant to
4 ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2).

5 C. Without admitting or denying the allegations of the Secretary’s Complaint, the
6 parties agree to the entry of this Consent Judgment and Order Between the Secretary of
7 Labor and Defendant Timothy John Hardt (“this Consent Judgment and Order”). The
8 parties further agree that this Consent Judgment and Order shall fully settle all claims of the
9 Secretary asserted in the Complaint against Defendant Hardt.

10 D. The Secretary’s Complaint alleges that Defendants Hardt and Dell Donne are
11 fiduciaries of the Plan within the meaning of Section 3(21), 29 U.S.C. § 1002(21), of
12 ERISA.

13 E. The Secretary’s Complaint alleges that Defendants Company, Hardt and Dell
14 Donne breached the fiduciary duties imposed on them by ERISA §§ 403(a); 403(c)(1);
15 404(a)(1)(A), (B) and (D); § 405(a); 406(a)(1)(B) and (D); and 406(b)(1) and (2); 29 U.S.C.
16 §§ 1103(a); 1103(c)(1); 1104(a)(1)(A), (B) & (D); 1105(a); 1106(a)(1)(B) & (D); and
17 1106(b)(1) and (2); by failing to remit, and remit timely, employee contributions and
18 participant loan repayments, and by failing to collect and deposit employer prevailing wage
19 contributions, to the Plan.

20 F. The Secretary’s Complaint alleges that, as a result of the breaches set forth in
21 Paragraph E, *supra*, and as more fully alleged in the Secretary’s Complaint, Defendants
22 Hardt and Dell Donne caused losses to the Plan for which they are jointly and severally
23 liable.

24 G. On May 30, 2012, this Court entered a Partial Consent Judgment and Order
25 Between the Secretary of Labor and Defendants Mark Dell Donne and the Journey Electrical
26 Technologies, Inc., 401(k) Plan.

1 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that:

2 1. Judgment is hereby entered against Defendant Hardt in the amount of
3 \$472,235.11 ("Amount Due").

4 2. Pursuant to ERISA § 409, 29 U.S.C. § 1109, Defendant Hardt is liable and
5 responsible for restoring \$472,235.11 in unremitted employee salary reduction contributions
6 and uncollected mandatory employer prevailing wage contributions, plus lost-opportunity
7 costs, to the Plan, plus post-judgment interest through the date of collection at the rate
8 established by 28 U.S.C. § 1961.

9 3. Defendant Hardt is permanently enjoined and restrained from violating the
10 provisions of Title I of ERISA, 29 U.S.C. §§ 1001-1191c.

11 4. Defendant Hardt is permanently enjoined and restrained from serving as
12 fiduciary of, or service provider to, any ERISA-covered plan.

13 5. Defendant Hardt shall cooperate fully with the Independent Fiduciary that
14 will be appointed by the Court pursuant to the May 30, 2012, Partial Consent Judgment and
15 Order Between the Secretary of Labor and Defendants Mark Dell Donne and the Journey
16 Electrical Technologies, Inc., 401(k) Plan, in providing documents or information he may
17 have relevant to the Plan's administration and management.

18 6. Defendant acknowledges that Plaintiff may, at any time in the future, record
19 and enforce a judgment lien under this Consent Judgment and Order against any real
20 property owned wholly or in part by Hardt, may seek attachment of assets, may garnish
21 wages, and may take any other actions to satisfy outstanding obligations under this Consent
22 Judgment and Order.

23 7. Defendant Hardt agrees that if he receives any funds from any source other
24 than wages, salary, commissions, interest income and dividends (including but not limited to
25 inheritance and capital gains; and, gambling winnings, lottery winnings, or cash gifts in
26 excess of \$1,000 per instance) within the meaning of Title 26 of the United States Code,
those funds received up to the Amount Due shall be paid to the Plan within 30 days of

CONSENT JUDGMENT AND ORDER – PAGE 3

OFFICE OF THE SOLICITOR
U.S. DEPT. OF LABOR
300 FIFTH AVE, SUITE 1120
SEATTLE, WA 98104
(206) 757-6758

1 receipt of such funds, in such manner as directed by the Plan's trustee or Independent
2 Fiduciary.

3 8. Defendant Hardt waives any right of his to restoration of missing employee
4 contributions and employer contributions, plus interest thereon, owed to him as a Plan
5 participant. The spouse of Defendant Hardt has consented to the waiver of amounts owed, as
6 evidenced by the Waiver of Benefits and Spousal Consent Form submitted by Defendant
7 Hardt contemporaneously with the filing of this Consent Judgment and Order, as Exhibit A,
8 and incorporated herein by reference. All restorations of the Amount Due plus Interest to the
9 Plan shall be allocated to all Plan participants other than Defendants Hardt (and, Dell
10 Donne, pursuant to the Partial Consent Judgment and Order Between the Secretary of Labor
11 and Defendants Mark Dell Donne and the Journey Electrical Technologies, Inc., 401(k)
12 Plan).

13 9. Wherever submission to the Secretary is required under the terms of this
14 Consent Judgment and Order, such submission shall be made to:

15 Crisanta Johnson
16 Regional Director
17 United States Department of Labor
18 Employee Benefits Security Administration
19 1055 East Colorado Blvd, Ste 200
20 Pasadena, CA 91106-2357

21 10. Contemporaneously with this Consent Judgment and Order, the Secretary and
22 Hardt have stipulated to the full nondischargeability of the Amount Due plus post-judgment
23 interest in a Joint Stipulation and Order as to Nondischargeability of Debt to be filed in the
24 associated case of Solis v. Hardt (In re Hardt), District Court Case No. 10-CV-01847. A
25 copy of the Joint Stipulation and Order as to Nondischargeability of Debt dated
26 September 14, 2012, is attached hereto as Exhibit B and its terms incorporated by
reference.

1 11. This Consent Judgment and Order does not in any manner affect the right of
2 the United States Department of Labor to assess a civil penalty of twenty percent (20%) on
3 amounts recovered pursuant to ERISA § 502(l), 29 U.S.C. § 1132(l), after the full recovery
4 of the Amount Due. This Consent Judgment and Order does not in any manner affect the
5 right of Defendant Hardt to apply for a waiver of such civil penalty pursuant to 29 C.F.R. §
6 2570.85-86, or contest such civil penalty assessment under Title 11 of the United States
7 Code.

8 12. The Secretary and Defendant Hardt shall each bear their own costs, expenses,
9 and attorney's fees incurred to date in connection with any stage of this proceeding,
10 including, but not limited to, attorney's fees that may be available under the Equal Access to
11 Justice Act, as amended.

12 13. Defendant Hardt expressly waives any and all claims of any nature which he
13 has or may have against the Secretary, the Department of Labor, or any of its officers,
14 agents, attorneys, employees or representatives, arising out of or in connection with the
15 allegations contained in the Complaint on file in this action, any other proceedings or
16 investigation incident thereto or based on the Equal Access to Justice Act, as amended.

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

20 15. This Court retains jurisdiction of this action for purposes of enforcing
21 compliance with the terms of this Consent Judgment and Order.

22 16. By signing their names to this Consent Judgment and Order, the parties
23 represent that they are informed and understand the effect and purpose of this Consent
24 Judgment and Order.

25 The Court directs the entry of this Consent Judgment and Order as a final order.
26 IT IS SO ORDERED, ADJUDGED, and DECREED.

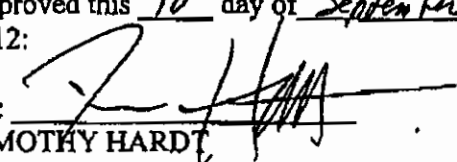
1 Dated: Oct. 31, 2012



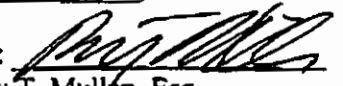
2
3 UNITED STATES DISTRICT COURT

4
5 Entry of this Consent Judgment is hereby consented to:

6 Approved this 10 day of September
7 2012:

8 By: 
9 TIMOTHY HARDT

10 Approved as to form this 10 day of
11 September, 2012:

12 By: 
13 Ray T. Mullen, Esq.
14 Law Office Of Ray T. Mullen
15 1405 Commercial Way, Suite 130
16 Bakersfield, California 93309

17 Murray Tragish, Esq.
18 Law Offices of Murray Tragish
19 1405 Commercial Way, Suite 130
20 Bakersfield, California 93309
21 Counsel for Defendant Timothy Hardt

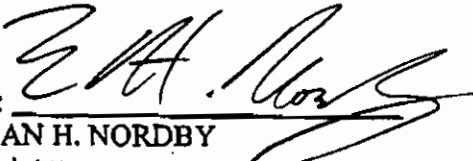
22 Approved this 14th day of September, 2012:

23 M. PATRICIA SMITH
24 Solicitor of Labor

25 JANET M. HEROLD
26 Regional Solicitor

BRUCE L. BROWN
Associate Regional Solicitor, Seattle

DANIELLE L. JABERG
Counsel for ERISA

By: 
EVAN H. NORDBY
Trial Attorney

Attorneys for Plaintiff
United States Department of Labor

WAIVER OF BENEFITS AND SPOUSAL CONSENT
(Re: Sells v. Hardt et al., E.D. Cal. No. 10-CV-2283-AWI-JLT)

1. I, Michelle Hardt, am married to Timothy Hardt.
2. I understand that Timothy Hardt is a Defendant in a lawsuit by authorized representatives of Hilda L. Sells, Secretary of Labor, United States Department of Labor ("Secretary"), regarding the Journey Electrical Technologies, Inc., 401(k) Plan.
3. I understand that the Secretary alleges that Timothy Hardt breached his fiduciary duties with respect to the Plan; in violation of ERISA §§ 403(a); 403(e)(1); 404(a)(1)(A), (B) and (D); § 405(a); 406(a)(1)(B) and (D); and 406(b)(1) and (2); 29 U.S.C. §§ 1103(a); 1103(e)(1); 1104(a)(1)(A), (B) & (D); 1105(a); 1106(a)(1)(B) & (D); and 1106(b)(1) and (2); which resulted in Plan losses.
4. Timothy Hardt is a participant in the Plan.
5. In consideration of the Secretary's agreement to resolve her claims against my spouse, Timothy Hardt, by Consent Judgment and Order, I renounce and agree not to pursue any present or future claim or interest that may have accrued or vested as my interest as the spouse or beneficiary of Timothy Hardt, in any portion of his participant account in the Plan that is ultimately forfeited pursuant to the Consent Judgment and Order.
6. I understand that as a result of my consent to this waiver, I will receive no benefits or distributions from any portion of the participant account of my spouse, Timothy Hardt, in the Plan forfeited pursuant to the Consent Judgment and Order.

Dated: 9-24 - 2012

Signature: Michelle Hardt
Print Name: Michelle Hardt

EXHIBIT A

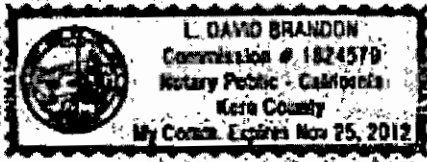
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Kern

On 9-24-12 before me, L. David Brandon, Notary Public

personally appeared Michelle Harot



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Signature]

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document, and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Waiver of Benefits

Document Date: 9-24-12 Number of Pages: 1

Signer(s) Other Than Named Above: N/A

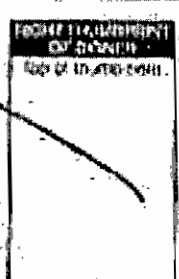
Capacity(ies) Claimed by Signor(s)

- Signer's Name: Michelle Harot
- Individual
 - Corporate Officer — Title(s): _____
 - Partner — Limited General
 - Attorney in Fact
 - Trustee
 - Guardian or Conservator
 - Other: _____



Signer is Representing: _____

- Signer's Name: _____
- Individual
 - Corporate Officer — Title(s): _____
 - Partner — Limited General
 - Attorney in Fact
 - Trustee
 - Guardian or Conservator
 - Other: _____



Signer is Representing: _____

1 Janet M. Herold, Regional Solicitor
Bruce L. Brown, Associate Regional Solicitor
2 Danielle L. Jaberg, Counsel for ERISA
Evan H. Nordby, Trial Attorney, WSBA #35937
3 Office of the Solicitor
U.S. Department of Labor
4 300 Fifth Ave., Suite 1120
Seattle, WA 98104
5 Telephone: (206) 757-6762
Facsimile: (206) 757-6761
6

7 Attorneys for Hilda L. Solis, Secretary of Labor,
United States Department of Labor, Plaintiff

8 UNITED STATES DISTRICT COURT FOR THE
9 EASTERN DISTRICT OF CALIFORNIA
10 FRESNO DIVISION

11 In re) District Ct. No. 1:10-CV-01847-AWI-JLT
12)
TIMOTHY JOHN HARDT fdba HARDEL,) Bankruptcy No. 09-62756-A-7
13)
INC. fdba JOURNEY ELECTRICAL)
14)
TECHNOLOGIES, INC. fdba THE) Adversary No.: 10-01206-A
15)
FITNESS CENTRE, LLC DELAWARE fdba)
16)
TRI STATE, INC. fdba THE FITNESS)
17)
CENTRE LLC CA_101 and MICHELLE) **JOINT STIPULATION AND ORDER AS**
18)
RENE HARDT) **TO NONDISCHARGEABILITY OF**
19)
20) **DEBT**

16 Debtors.)

17 HILDA L. SOLIS, Secretary of Labor,)
United States Department of Labor,)

18 Plaintiff,)

19 vs.)

20)
21 TIMOTHY JOHN HARDT fdba HARDEL,)
INC. fdba JOURNEY ELECTRICAL)
22)
TECHNOLOGIES, INC. fdba THE)
23)
FITNESS CENTRE, LLC DELAWARE fdba)
24)
TRI STATE, INC. fdba THE FITNESS)
CENTRE LLC CA_101 and MICHELLE)
25)
RENE HARDT,)

25 Defendants.)

26

1 Plaintiff-Creditor HILDA L. SOLIS, Secretary of Labor, United States Department
2 of Labor (“Secretary”), on behalf of the Journey Electrical Technologies, Inc. 401(k) Plan
3 (“Plan” or “401(k) Plan”), and TIMOTHY JOHN HARDT fdba HARDEL, INC. fdba
4 JOURNEY ELECTRICAL TECHNOLOGIES, INC. fdba THE FITNESS CENTRE, LLC
5 DELAWARE fdba TRI STATE, INC. fdba THE FITNESS CENTRE LLC CA_101
6 (“Debtor”) and MICHELLE RENE HARDT (collectively “Debtors”), having agreed to
7 resolve any dispute as to the dischargeability of the debt owed by the Debtors to the Plan,
8 and pursuant to L.R. 143 and 144, hereby consent to the following Joint Stipulation and
9 Order as to Nondischargeability of Debt (“Stipulation”) and entry of an Order from the
10 Court in accordance herewith:

11 1. On December 30, 2009, the Debtors filed a Petition for protection under
12 Chapter 7 of the Bankruptcy Code in this Court.

13 2. The Notice to Creditors in this matter stated that it was not necessary to file a
14 Proof of Claim, as there were no assets to distribute in this matter; therefore, the Secretary
15 did not file a Proof of Claim.

16 3. This Court has jurisdiction over the parties and the subject matter of this
17 Stipulation.

18 4. Debtor Timothy Hardt is a fiduciary of the Plan within the meaning of
19 Section 3(21), 29 U.S.C. § 1002(21), of the Employee Retirement Income Security Act of
20 1974 (“ERISA”).

21 5. The Plan is an employee benefit plan within the meaning of section 3(3) of
22 the ERISA, 29 U.S.C. § 1002(3).

23 6. Debtor Timothy Hardt breached the fiduciary duties imposed upon him by
24 ERISA Sections 404(a)(1)(A), (B) and (D), 406(a)(1)(B), 406(b)(1) & (2), and 403(c)(1), 29
25 U.S.C. §§ 1104(a)(1)(A), (B), & (D); 1106(a)(1)(B), 1106(b)(1) & (2), and 1103(c)(1), by
26 failing to remit, and remit timely, employee contributions and participant loan payments to
the 401(k) Plan.

1 7. Debtor Timothy Hardt further breached the fiduciary duties imposed upon
2 him by ERISA Sections 404(a)(1)(A), (B) and (D), and 406(b)(2), 29 U.S.C.
3 §§ 104(a)(1)(A), (B), & (D), 1106(b)(2), by failing to collect, and collect timely, mandatory
4 employer prevailing wage contributions due to the 401(k) Plan.

5 8. As a result of the fiduciary breaches set forth in Paragraphs 6 and 7, *supra*,
6 and the Consent Judgment and Order between the Secretary of Labor and Defendant
7 Timothy John Hardt agreed to contemporaneously with this filing in Solis v. Hardt et al.,
8 Case No. 1:10-CV-02283-AWI-JLT, Debtor Timothy Hardt owes a debt of \$472,235.11 to
9 the 401(k) Plan (“Amount Due”). Interest shall accrue on the Loss Amount at the rate set
10 forth in 28 U.S.C. § 1961 from the date this Court enters an Order finding the Amount Due
11 is nondischargeable until such time as the Amount Due is paid to the Plan in full.

12 9. The debt to the Plan arose from Debtor Timothy Hardt’s breaches of
13 fiduciary duties owed to the Plan, as set forth in Paragraphs 6 and 7, *supra*, and such
14 breaches also constitute fiduciary defalcation under Section 523(a)(4) of the Bankruptcy
15 Code, 11 U.S.C. § 523(a)(4).

16 10. The parties consent to an entry of an Order that the debt to the Plan shall be a
17 nondischargeable debt, without the need for trial or adjudication of any issue of fact or law.

18 11. This Joint Stipulation and Order does not in any manner affect the right of the
19 United States Department of Labor to assess a civil penalty of twenty percent (20%) on
20 amounts recovered pursuant to ERISA § 502(l), 29 U.S.C. § 1132(l), after the full recovery
21 of the Amount Due under the Consent Judgment and Order referred to in Paragraph 8 *infra*.
22 This Joint Stipulation and Order does not in any manner affect the right of Defendant Hardt
23 to apply for a waiver of such civil penalty pursuant to 29 C.F.R. § 2570.85-86, or contest
24 such civil penalty assessment under Title 11 of the United States Code.

25 12. While Section 524 of the Bankruptcy Code, 11 U.S.C. § 524, provides that
26 any agreement for the nondischargeability of debt may be rescinded at any time prior to
discharge or within sixty (60) days after such agreement is filed with the court, whichever

1 occurs later, Debtors agree that they will not rescind this Stipulation as to
2 Nondischargeability of Debt.

3 13. The parties understand that this agreement is not required under Title 11 of
4 the United States Code, under non-bankruptcy law, or under any agreement not in
5 accordance with the provisions of 11 U.S.C. § 524(c)(2)(B).

6 14. Debtors expressly waive any and all claims of any nature, which they have or
7 believe they may have against the United States Department of Labor, the Secretary, or any
8 of her officers, agents, employees, or representatives, arising out of or in connection with the
9 filing, prosecution, and maintenance of this adversary proceeding and any other proceeding
10 or investigation incident to this adversary proceeding.

11 15. Nothing in this Stipulation is binding on any governmental agency other than
12 the Employee Benefits Security Administration, United States Department of Labor.

13 16. The parties shall bear their own costs, expenses, and attorneys' fees incurred
14 in connection with any stage of the above-referenced proceeding to date, including but not
15 limited to, attorneys' fees which may be available under the Equal Access to Justice Act, as
16 amended.

17 17. The Secretary hereby waives and releases all claims asserted in her
18 Adversary Complaint against Debtor Michelle Rene Hardt.

19 The Court directs the entry of this Joint Stipulation and Order as a final order.
20 IT IS SO ORDERED, ADJUDGED, and DECREED.

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The undersigned consent to the foregoing Stipulation and consent to the entry of an Order from the Court consistent herewith.

Approved this ____ day of _____, 2012:	Approved this ____ day of _____, 2012:
By: _____ TIMOTHY HARDT	M. PATRICIA SMITH Solicitor of Labor
Approved this ____ day of _____, 2012:	JANET M. HEROLD Regional Solicitor
By: _____ MICHELLE HARDT	BRUCE L. BROWN Associate Regional Solicitor, Seattle
Approved as to form this ____ day of _____, 2012:	DANIELLE L. JABERG Counsel for ERISA
By: _____ Ray T. Mullen, Esq. Law Office Of Ray T. Mullen 1405 Commercial Way, Suite 130 Bakersfield, California 93309	By: _____ EVAN H. NORDBY Trial Attorney
Murray Tragish, Esq. Law Offices of Murray Tragish 1405 Commercial Way, Suite 130 Bakersfield, California 93309 Counsel for Defendant Timothy Hardt	Attorneys for Plaintiff United States Department of Labor

IT IS SO ORDERED.

Dated: September 14, 2012



CHIEF UNITED STATES DISTRICT JUDGE