

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

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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 SETH D. HARRIS, Acting Secretary of) Case No. 1:10-CV-02283-AWI-JLT
Labor, United States Department of Labor,¹)
12 Plaintiff,) **STIPULATION TO AMEND PARTIAL**
13 vs.) **CONSENT JUDGMENT AND ORDER**
14) **BETWEEN THE SECRETARY OF**
TIMOTHY JOHN HARDT, MARK DELL) **LABOR AND MARK DELL DONNE**
15 DONNE, and the JOURNEY ELECTRICAL) **AND THE JOURNEY ELECTRICAL**
16 TECHNOLOGIES, INC. 401(K) PLAN,) **TECHNOLOGIES, INC. 401(K) PLAN**
17 Defendants.)
18)

19 WHEREAS:

20 A. Plaintiff HILDA L. SOLIS, then-Secretary of Labor, United States Department
21 of Labor; MARK DELL DONNE, an individual (“Dell Donne”); and the JOURNEY
22 ELECTRICAL TECHNOLOGIES, INC. 401(K) PLAN (the “Plan” or “401(k) Plan”)²
23 agreed to a Partial Consent Judgment and Order to resolve this matter, which was entered by
24 this Court on May 30, 2012. (Dkt. 49).

25 ¹ Seth D. Harris was appointed as Acting Secretary of Labor on January 24, 2013. Pursuant
to Fed. R. Civ. P. 25(d) the caption has been changed to reflect the appointment.

26 ² The Plan is named in the Secretary’s Complaint as a party necessary for complete relief.
Fed. R. Civ. P. 19(a).

1 B. The May 30, 2012 Partial Consent Judgment and Order awarded a judgment in
2 the amount of \$472,235.11 against Dell Donne.

3 C. Under the May 30, 2012 Partial Consent Judgment and Order, Dell Donne
4 assigned the right to collect \$450,000.00 of the proceeds of an arbitration award in the
5 matter of Tri-State, Inc. d/b/a Journey Electrical Technologies, et al. v. Taisei Construction
6 Corporation, et al., Los Angeles County Superior Court Case No. NC053609 (the
7 “Arbitration Award”) from Journey Electrical Technologies to the Plan.

8 D. Under the May 30, 2012 Partial Consent Judgment and Order, Dell Donne further
9 forfeited his account balance in the Plan, totaling \$22,235.11 valued as of April 21, 2012.

10 E. Following Dell Donne’s assignment of the \$450,000.00 portion of the Arbitration
11 Award to the Plan, other creditors of Journey Electrical Technologies asserted claims against
12 the Arbitration Award, and Taisei Construction Corporation interpleaded the entirety of the
13 Arbitration Award funds in Los Angeles County Superior Court.

14 F. Representatives of Plaintiff SETH D. HARRIS, Acting Secretary of Labor,
15 United States Department of Labor (“Secretary” or “EBSA”), and, Defendant Dell Donne
16 participated in a mediation on March 26, 2013, which resolved the dispute over the
17 interpleaded Arbitration Award funds resulting in a recovery of \$312,240.44 to the Plan
18 under the assignment from Journey Electrical Technologies, Inc. under the Stipulated
19 Settlement and Order Pursuant to Stipulation for Distribution of Interpleaded Funds attached
20 as Exhibit A.

21 G. The Secretary and Defendants Dell Donne and the Plan therefore wish to amend
22 the Partial Consent Judgment and Order.

23 H. The Secretary and Defendants Dell Donne and the Plan reaffirm that the Partial
24 Consent Judgment and Order as amended shall settle all claims of the Secretary asserted in
25 the Complaint against Defendants Dell Donne and the Plan, as set forth in Paragraph 14 in
26 the May 30, 2012 Partial Consent Judgment and Order.

THEREFORE:

1 The Secretary and Defendants Dell Donne and the Plan stipulate to amend the May
2 30, 2012 Partial Consent Judgment and Order, which is appended to this Stipulation as
3 Exhibit B and is incorporated by reference, by substituting each of the following numbered
4 paragraphs for those corresponding numbered paragraphs in the May 30, 2012 Partial
5 Consent Judgment and Order, and by adding a new Paragraph 19 as set forth below:

6 1. Judgment is hereby entered against Defendant Dell Donne in the amount of
7 \$334,475.55.

8 2. Pursuant to ERISA Section 409, 29 U.S.C. § 1109, Defendant Dell Donne is
9 responsible for restoring \$334,475.55 in unremitted employee salary reduction contributions
10 and uncollected mandatory employer prevailing wage contributions, including lost-
11 opportunity costs (“Amount Due”), to the Plan, through the obligations set forth in
12 Paragraphs 7 and 8, *infra*.

13 4. M. Larry Lefoldt, of Lefoldt & Co., P.A., 690 Towne Center Boulevard, Post
14 Office Box 2848, Ridgeland, MS 39158-2848, phone number (601) 956-2374, is appointed
15 Independent Fiduciary and Trustee of the Plan with the duties set forth in Paragraph 5, *infra*.
16 Defendant Dell Donne is removed as the Trustee of the Plan and is permanently enjoined
17 and restrained from serving as fiduciary of, or service provider to, any ERISA -covered plan.

18 7. On April 23, 2012, Defendant Dell Donne executed a fully binding and
19 irrevocable assignment of the right to collect a portion of the proceeds of the arbitration
20 award, in the amount of \$450,000, in Tri-State, Inc. d/b/a Journey Electrical Technologies v.
21 Taisei Const. Corp., Los Angeles Superior Court No. NC053609, from Tri-State, Inc., d/b/a
22 Journey Electrical Technologies, Inc. to the Plan, directed that Tri-State, Inc., d/b/a Journey
23 Electrical Technologies, Inc. pay such \$450,000 to the Plan when received in partial
24 satisfaction of the Amount Due to the Plan, and fully warrants and represents that he had
25 authority to execute such assignment and make such direction. Under the Stipulated
26 Settlement and Order Pursuant to Stipulation for Distribution of Interpleaded Funds entered
May 1, 2013 in Tri-State, Inc. d/b/a Journey Electrical Technologies v. Taisei Const. Corp.,
Los Angeles Superior Court No. NC053609, the Plan will recover \$312,240.44 from the

1 Arbitration award (“Amended Arbitration Award”) under said assignment from Journey
2 Electrical Technologies, Inc.

3 19. Within five business days of receipt of the check representing the Amended
4 Arbitration Award to the Plan set forth in Paragraph 7, *supra*, Defendant Dell Donne shall
5 deposit the check into the Plan’s trust account at American United Life Insurance Company.
6 The Secretary agrees that upon the deposit of the Amended Arbitration Award to the Plan
7 set forth in Paragraph 7 *supra*, in addition to Defendant Dell Donne’s forfeiture of his entire
8 account balance in the Plan, totaling \$22,235.11 valued as of April 21, 2012, set forth in
9 Paragraph 8 *supra*, that Defendant Dell Donne’s obligation to pay the Amount Due under
10 this Partial Consent Judgment and Order is satisfied in full.

11 20. Within ten business days from the date the Secretary receives written
12 confirmation of the deposit of the check representing the Amended Arbitration Award to the
13 Plan set forth in Paragraph 7, *supra*, to the Plan’s trust account, the Secretary will execute
14 and file a Satisfaction of Judgment form with the Court and provide a copy to Dell Donne’s
15 counsel, Muzi & Associates.

16 SO STIPULATED:

17 By: _____
18 MARK DELL DONNE
19 Defendant

M. PATRICIA SMITH
Solicitor of Labor

JANET M. HEROLD
Regional Solicitor

20 Date: _____

BRUCE L. BROWN
Associate Regional Solicitor, Seattle

21 Approved as to form:

22 By: _____

DANIELLE L. JABERG
Counsel for ERISA

23 Attorney for Defendant Mark Dell
24 Donne

By: s/ Evan H. Nordby
EVAN H. NORDBY
Trial Attorney

25 Date: _____

Attorneys for Plaintiff
United States Department of Labor

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IT IS SO ORDERED.

Dated: June 20, 2013



SENIOR DISTRICT JUDGE