

1 Janet M. Herold
Regional Solicitor
2 Daniel J. Chasek
Associate Regional Solicitor
3 Danielle L. Jaberg, Counsel for ERISA
Luis A. Garcia, Attorney (CSBN #146876)
4 Office of the Solicitor
United States Department of Labor
5 350 South Figueroa Street, Suite 370
Los Angeles, California 90071-1202
6 Telephone: (213) 894-2681
Facsimile: (213) 894-2064
7 garcia.luis.a@dol.gov

8 Attorneys for the Plaintiff
United States Department of Labor
9

10 UNITED STATES DISTRICT COURT
11 EASTERN DISTRICT OF CALIFORNIA
12

13 **HILDA L. SOLIS**,
14 Secretary of Labor,
United States Department of Labor,

15 Plaintiff,

16 v.

17 **HI-COUNTRY ELECTRIC, INC.** a Cali-
18 formia corporation; **ROB L.**
FRITZEMEIER, an individual; and **HI-**
19 **COUNTRY ELECTRIC 401(k) PLAN**,

20 Defendants

) Case No. 1:12-CV-00482-LJO-SKO

) **CONSENT JUDGMENT AND**
) **ORDER**

21
22 Plaintiff HILDA L. SOLIS, Secretary of Labor, United States Department of La-
23 bor (“Secretary”) pursuant to her authority under Sections 502(a)(2) and (5) of the Em-
24 ployee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. §§ 1132(a)(2)
25 and (5), has filed a Complaint against Defendant HI-COUNTRY ELECTRIC, INC.
26 (“Hi-Country” or “Company”), a California corporation, Defendant ROB L.
27 FRITZEMEIER (“Fritzemeier” or “Trustee”), an individual, and Defendant HI-
28

1 COUNTRY ELECTRIC 401(k) PLAN (“401(k) Plan” or the “Plan”), an employee bene-
2 fit plan within the meaning of Section 3(3) of ERISA, 29 U.S.C. § 1002(3).¹

3 A. The Secretary, Hi-Country, Fritzemeier, and the Plan (collectively, the
4 “Parties”) admit that the Court has jurisdiction over this action pursuant to ERISA Sec-
5 tion 502(e)(1), 29 U.S.C. § 1132(e)(1), and that venue lies in the Eastern District of Cali-
6 fornia pursuant to ERISA Section 502(e)(2), 29 U.S.C. § 1132(e)(2).

7 B. Defendants Hi-Country, Fritzemeier, and the Plan (collectively the “Defen-
8 dants”) waive filing of an Answer and entering any affirmative defense, counterclaim, or
9 third-party complaint, or any other defenses that they may have in this case.

10 C. The Parties agree to the entry of this Consent Judgment and Order. The
11 parties further agree that this Consent Judgment and Order shall fully settle all claims of
12 the Secretary asserted in the Complaint filed in this matter.

13 D. All parties expressly waive Findings of Fact and Conclusions of Law.

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

15 1. Defendant Fritzemeier is permanently enjoined and restrained from violat-
16 ing the provisions of Title 1 of ERISA, 29 U.S.C. §§1001-1191(c).

17 2. Defendant Hi-Country is hereby removed as Plan Administrator and fidu-
18 ciary of the Plan.

19 3. Defendant Fritzemeier is hereby removed as a fiduciary of the Plan, subject
20 to the exceptions set forth in Paragraphs 4, 7 and 8 below.

21 4. Defendant Fritzemeier shall succeed as Plan Administrator and shall remain
22 a fiduciary of the Plan solely for the purpose of making distributions of the assets of the
23 Plan and implementing the termination of the Plan, in accordance with the instructions
24 set forth below in Paragraphs 7 and 8. After Defendant Fritzemeier fulfills the duties set
25
26

27 _____
28 ¹ The Plan is named in the Secretary’s Complaint as a party necessary for complete relief pursuant to Fed.R.Civ.P. 19(a).

1 forth in Paragraphs 7 and 8, he shall immediately be removed from his positions as Plan
2 Administrator and fiduciary of the Plan.

3 5. Defendant Fritzeimer is permanently enjoined and restrained from future
4 service as a fiduciary of, or service provider to, any ERISA-covered employee benefit
5 plan subject to the exceptions set forth in Paragraphs 4, 7 and 8 herein.

6 6. Within fifteen (15) calendar days following the Court's entry of this Con-
7 sent Judgment and Order, Defendant Fritzeimer shall provide a copy of this Consent
8 Judgment and Order to the Plan's custodial trustee, ING, North America Insurance Cor-
9 poration ("ING").

10 7. Within thirty (30) calendar days following the Court's entry of this Consent
11 Judgment and Order, Defendant Fritzeimer shall take the following action:

12 (a) Defendant Fritzeimer shall notify ING of the Plan's terminated status in
13 writing, and shall authorize and direct ING, in writing, to make distributions to all eligi-
14 ble participants and/or beneficiaries in accordance with the Plan terms and the partici-
15 pant's and/or beneficiary's elected method of receipt of the funds (*e.g.*, via lump-sum
16 distribution to the participants or a direct rollover into another qualified retirement ac-
17 count belonging to the participant and/or beneficiary). Defendant Fritzeimer shall mon-
18 itor and ensure ING carries out his directions consistent with the Plan terms and ERISA.

19 (b) Defendant Fritzeimer shall provide, within 10 business days, documenta-
20 tion to the Secretary of his written notification to ING of the Plan's terminated status as
21 set forth in Paragraph 7(a).

22 (c) Defendant Fritzeimer shall, pursuant to the procedures outlined in the Em-
23 ployee Benefit Security Administration Field Bulletin 2004-02, exercise reasonable care
24 and diligence to identify and locate each participant and beneficiary of the Plan who is
25 eligible to receive a distribution under the terms of the Plan.

26 (d) Defendant Fritzeimer shall timely file a Final Form 5500 for the Plan.
27
28

1 8. Within fifteen (15) calendar days of the completion of all actions set forth
2 above in both Paragraphs 7(a) and 7(c):

3 (a) Defendant Fritzeimer shall provide documentation verifying the final li-
4 quidation and disposition of the Plan's assets to the Secretary, and thereafter, he shall
5 immediately be removed from his positions as Plan Administrator and fiduciary of the
6 Plan.

7 (b) Defendant Fritzeimer shall also provide to the Secretary upon request any
8 other documentation related to its investigation.

9 9. The final liquidation and disposition of the Plan's assets shall occur no later
10 than **February 28, 2013**.

11 10. Each time a submission to the Secretary is required under this Consent
12 Judgment and Order, such submission shall be made by reliable overnight delivery and
13 facsimile to:

14 Jean Ackerman, Regional Director
15 United States Department of Labor
16 Employee Benefits Security Administration
17 90 7th Street, Suite 11300
18 San Francisco, California 94103
19 Fax: 415-625-2450

20 11. Defendants expressly waive any and all claims of any nature which they
21 have or may have against the Secretary, the Department of Labor, or any of its officers,
22 agents, attorneys, employees or representatives, arising out of or in connection with the
23 allegations contained in the Complaint on file in this action, any other proceedings or in-
24 vestigation incident thereto or based on the Equal Access to Justice Act, as amended.

25 12. The parties shall each bear their own costs, expenses, and attorneys' fees
26 incurred to date in connection with any stage of this proceeding, including but not li-

1 mited to attorneys' fees which may be available under the Equal Access to Justice Act,
2 as amended.

3 13. Nothing in this Consent Judgment and Order is binding on any governmen-
4 tal agency other than the United States Department of Labor, Employee Benefits Securi-
5 ty Administration.

6 14. This Court retains jurisdiction of this action for purposes of enforcing com-
7 pliance with the terms of this Consent Judgment and Order.

8 15. By signing their names to this Consent Judgment and Order, the Parties
9 represent that they are informed and understand the effect and purpose of this Consent
10 Judgment and Order.

11 16. This Consent Judgment and Order may be executed in counterparts, each of
12 which shall be deemed an original, but all of which taken together, shall constitute one
13 and the same instrument. For purposes of this Consent Judgment and Order, a facsimile
14 signature shall be deemed an original signature with the same force and legal effect.

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

16 * * * * *

17 Entry of this Consent Judgment is hereby consented to:

18 Dated: June 26, 2012

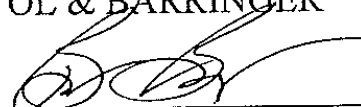
19 M. PATRICIA SMITH
20 Solicitor of Labor
21 JANET M. HEROLD
22 Regional Solicitor
23 DANIEL J. CHASEK
24 Associate Regional Solicitor
25 DANIELLE L. JABERG
26 Counsel for ERISA

27 _____
28 /s/ Luis A. Garcia
LUIS A. GARCIA, Attorney
Attorneys for Plaintiff, U.S. Dept. of Labor

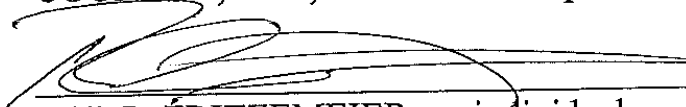
1 Defendants consent to the entry of this Consent Judgment and Order.

2 Date: June 25, 2012.

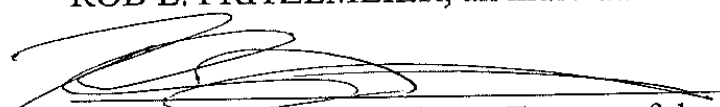
MAYOL & BARRINGER

3 
4 _____
5 BART BARRINGER, Attorney for HI-
6 COUNTRY, INC., a California corporation

7 Date: June 26, 2012.

8 
9 _____
10 ROB L. FRITZEMEIER, an individual

11 Date: June 26, 2012.

12 
13 _____
14 ROB L. FRITZEMEIER, as Trustee of the
15 HI-COUNTRY 401(k) PLAN

16 IT IS SO ORDERED.

17 Dated: June 27, 2012

18 /s/ Lawrence J. O'Neill
19 UNITED STATES DISTRICT JUDGE