

1 BARRY E. HINKLE, Bar No. 071223
 CONCEPCIÓN E. LOZANO-BATISTA, Bar No. 227227
 2 KRISTINA M. ZINNEN, Bar No. 245346
 WEINBERG, ROGER & ROSENFELD
 3 A Professional Corporation
 1001 Marina Village Parkway, Suite 200
 4 Alameda, California 94501-1091
 Telephone (510) 337-1001
 5 Fax (510) 337-1023

6 Attorneys for Plaintiffs

7 G. DANIEL NEWLAND, Bar No. 087965
 ARI HERSHER, Bar No. 260321
 8 SEYFARTH SHAW LLP
 560 Mission Street, Suite 3100
 9 San Francisco, California 94105
 Telephone (415) 397-2823
 10 Fax (415) 397-8549

11 Attorneys for Defendant

12 UNITED STATES DISTRICT COURT
 13 NORTHERN DISTRICT OF CALIFORNIA
 14

15 THE BOARD OF TRUSTEES, in their)
 capacities as Trustees of the LABORERS)
 16 HEALTH AND WELFARE TRUST FUND)
 FOR NORTHERN CALIFORNIA; LABORERS)
 17 VACATION-HOLIDAY TRUST FUND FOR)
 NORTHERN CALIFORNIA; LABORERS)
 18 PENSION TRUST FUND FOR NORTHERN)
 CALIFORNIA; and LABORERS TRAINING)
 19 AND RETRAINING TRUST FUND FOR)
 NORTHERN CALIFORNIA; NORTHERN)
 20 CALIFORNIA DISTRICT COUNCIL OF)
 LABORERS for itself and on behalf of)
 21 LABORERS' LOCAL 139)

) No. C 08-03292 EMC

) **STIPULATED REQUEST TO**
) **CONTINUE CASE MANAGEMENT**
) **CONFERENCE; [PROPOSED]**
) **ORDER**

22 Plaintiffs,

23 v.

24 CAL-KIRK LANDSCAPING, INC., A
 25 California Corporation,

) Date: November 18, 2009
) Time: 1:30 p.m.
) Judge: Honorable Edward M. Chen
) Courtroom: C, 15th Floor

26 Defendant.
 27

1 Pursuant to Civil Local Rules 7-12 and 16-2, Plaintiffs and Defendant hereby request that
2 the initial Case Management Conference scheduled for November 18, 2009 be continued for 60
3 days. Plaintiffs and Defendant are in the process of attempting to resolve this matter. Plaintiffs
4 filed the original Complaint and Petition to Confirm in this action on July 9, 2008. On or around
5 November 2008, Defendant agreed to allow Plaintiffs' auditors to audit their records to determine
6 whether any amounts were due and owing as a result of the audit. Plaintiffs thereafter conducted
7 an audit of Defendant's records and found a number of delinquencies owed by Defendant. On or
8 around February 2009, Plaintiffs submitted their audit findings to Defendant to allow Defendant
9 the opportunity to review those results and challenge any delinquencies it believed were in error.
10 After receiving no response from Defendant, Plaintiffs filed their First Amended Complaint for
11 Petition to Confirm Arbitration Award, Breach of Contract, Damages, and Breach of Fiduciary
12 Duty on May 7, 2009. On or around May 15, 2009, Plaintiffs received documentation from
13 Defendant. On or around June 3, 2009, Plaintiffs were notified that Defendant had retained legal
14 counsel on or around May 21, 2009. On June 4, at the request of the parties, the Court granted
15 Defendant an extension of time to answer or otherwise respond to Plaintiffs' First Amended
16 Complaint to July 31, 2009. The parties thereafter stipulated to two additional extensions of time
17 for Defendant to answer or otherwise respond to Plaintiffs' First Amended Complaint to August
18 31, 2009 and September 9, 2009, respectively. Defendant timely answered on September 9, 2009.

19 As a result of the documentation that Defendant submitted to Plaintiffs, Plaintiffs have
20 made adjustments to the audit worksheets. Plaintiffs and Defendant are currently engaged in a
21 review of the revised audit worksheets and are attempting to resolve the matter without further
22 litigation. The parties have requested one prior continuance of the Case Management Conference.
23 A second continuance would promote judicial efficiency because the parties are very close to
24 reaching a settlement and anticipate they will reach a settlement in this matter within the next 60
25 days.

26 ///

27 ///

28

1 Based on the above, Plaintiffs and Defendant respectfully request that the initial case
2 management conference scheduled for November 18, 2009 be continued for 60 days, in order to
3 allow the parties time to attempt to resolve the matter without further litigation.

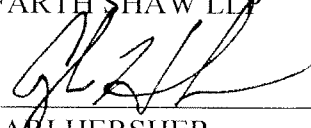
4 Dated: November 12, 2009

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

6 By: _____ /s/
7 KRISTINA M. ZINNEN
8 Attorneys for Plaintiffs

9
10 Dated: November 12, 2009

SEYFARTH SHAW LLP

11
12 By:  _____
13 ARI HERSHER
14 Attorney for Defendant

15 **~~PROPOSED~~ ORDER CONTINUING CASE MANAGEMENT CONFERENCE**

16 Based upon the foregoing Stipulated Request to Continue Case Management Conference,
17 the Court orders the continuance of the case management conference for 60 days, or as soon
18 thereafter as a court date is available. In addition, the Court Orders:

19 The CMC is reset from 11/18/09 to 1/27/10 at 1:30 p.m. A Joint CMC statement shall be filed
20 by 1/20/10. Plaintiff shall serve a copy of this order upon defendant.

21 Dated: 11/12/09

22 The Honorable Edward M. Chen
23 United States Magistrate Judge

24 115853/550967

