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15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA

17 THE BOARD OF TRUSTEES, in their capacities as)
 18 Trustees of the LABORERS HEALTH AND)
 19 WELFARE TRUST FUND FOR NORTHERN)
 20 CALIFORNIA; LABORERS VACATION-HOLIDAY)
 21 TRUST FUND FOR NORTHERN CALIFORNIA;)
 22 LABORERS PENSION TRUST FUND FOR)
 23 NORTHERN CALIFORNIA; and LABORERS)
 24 TRAINING AND RETRAINING TRUST FUND FOR)
 25 NORTHERN CALIFORNIA; and THE BOARD OF)
 26 TRUSTEES, in their capacities as Trustees of the)
 27 CEMENT MASONS HEALTH AND WELFARE)
 28 TRUST FUND FOR NORTHERN CALIFORNIA;)
 CEMENT MASONS PENSION TRUST FUND FOR)
 NORTHERN CALIFORNIA; CEMENT MASONS)
 VACATION/HOLIDAY TRUST FUND FOR)
 NORTHERN CALIFORNIA; CEMENT MASONS)
 APPRENTICESHIP AND TRAINING TRUST FUND)
 FOR NORTHERN CALIFORNIA,)

No. 1:08-CV-5652-CRB

**JOINT CASE MANAGEMENT
 CONFERENCE STATEMENT;
 (PROPOSED) ORDER**

Date: March 27, 2009
Time: 10 a.m.
Courtroom: 17th Floor

Plaintiffs,

v.

VARGAS & ESQUIVEL CONSTRUCTION, INC., a
 California Corporation,

Defendant.

WEINBERG, ROGER & ROSENFELD
 A Professional Corporation
 1001 Marina Village Parkway
 Suite 200
 Alameda, CA 94501-1091
 (510) 337-1001

1 The parties to the above-entitled actions jointly submit this Case Management Conference
2 Statement and Proposed Order and a Stipulation to Continue the Case Management Conference for
3 approximately 60 days, filed herewith.

4 **A. FACTS AND ALLEGATIONS**

5 The Plaintiffs in the consolidated matter are Trustees representing Laborers Union or
6 Cement Masons Union employee benefit plans created by written Trust Agreements subject to and
7 pursuant to section 302 of the Labor Management Relations Act (29 U.S.C. § 186) and multi-
8 employer employee benefit plans within the meaning of sections 3, 4 and 502 of ERISA (29 U.S.C.
9 §§ 1002, 1003 and 1132).

10 Defendant VARGAS & ESQUIVEL CONSTRUCTION, INC., a California Corporation,
11 has been an employer within the meaning of section 3(5) and section 515 of ERISA (29 U.S.C. §§
12 1002(5), 1145) and an employer in an industry affecting commerce within the meaning of section
13 301 of the LMRA (29 U.S.C. § 185). Plaintiff alleges that Defendant has also been a member of
14 the Engineering & Utility Contractors Association (hereinafter referred to as EUCA), and by virtue
15 of such membership, became subject to all the terms and conditions of the Laborers Master
16 Agreement (hereinafter “Laborers Agreement”) and the Cement Masons Master Labor Agreement
17 (hereinafter “Cement Masons Agreement”).

18 The Laborers and Cement Masons Agreements provide for prompt payment of all
19 delinquent contributions to the various Trust Funds, and provide for the payment of interest on all
20 delinquent contributions, liquidated damages, attorneys’ fees, and other collection costs, and for
21 the audit of the signatory employer or employers’ books and records in order to permit the
22 Plaintiffs to ascertain whether all fringe benefit contributions have been timely paid as required by
23 the applicable labor agreements and law.

24 Plaintiffs THE BOARD OF TRUSTEES, in their capacities as Trustees of the LABORERS
25 HEALTH AND WELFARE TRUST FUND FOR NORTHERN CALIFORNIA; LABORERS
26 VACATION-HOLIDAY TRUST FUND FOR NORTHERN CALIFORNIA; LABORERS
27 PENSION TRUST FUND FOR NORTHERN CALIFORNIA; and LABORERS TRAINING AND

1 RETRAINING TRUST FUND FOR NORTHERN CALIFORNIA, (hereinafter “Laborers Trust
2 Funds”) allege that Defendant has failed, neglected, or refused to make timely fringe benefit
3 contributions to the Laborers Trust Funds as required by the Laborers Agreement and Trust
4 Agreements establishing Plaintiff trust funds, and there is now due and owing and unpaid to
5 Plaintiffs contributions in the sum of at least \$16,252.86 and liquidated damages and interest in the
6 sum of at least \$1,669.72 for hours reported, but not paid, for the months of February 2008 through
7 July 2008; and liquidated damages and interest for hours reported and paid, but paid late, for the
8 period of November 2005 through May 2008, in the sum of at least \$10,772.71.

9 Plaintiffs THE BOARD OF TRUSTEES, in their capacities as Trustees of the CEMENT
10 MASONS HEALTH AND WELFARE TRUST FUND FOR NORTHERN CALIFORNIA;
11 CEMENT MASONS PENSION TRUST FUND FOR NORTHERN CALIFORNIA; CEMENT
12 MASONS VACATION/HOLIDAY TRUST FUND FOR NORTHERN CALIFORNIA; CEMENT
13 MASONS APPRENTICESHIP AND TRAINING TRUST FUND FOR NORTHERN
14 CALIFORNIA, allege that Defendant has failed, neglected, or refused to make timely fringe
15 benefit contributions as required by the Cement Masons Agreement and Trust Agreements
16 establishing Plaintiff Cement Masons Trust Funds there is now due and owing and unpaid to
17 Plaintiff Cement Masons Board of Trustees contributions in the sum of at least \$32,520.87 and
18 liquidated damages and interest in the sum of at least \$4,823.06 for hours reported, but not paid,
19 for the months of December 2007 through September 2008; and liquidated damages and for hours
20 reported and paid, but paid late, for the period of November 2005 through November 2007 in the
21 sum of at least \$6,830.00.

22 Plaintiffs bring this suit against Defendant to collect said amounts owed and allege that
23 Defendant breached its contracts with Plaintiff Trust Funds and their fiduciaries under ERISA.
24 Plaintiffs also request an audit to be performed of Defendant’s books and records.

25 Defendant denies Plaintiffs’ material allegations, and further denies that Plaintiffs are
26 entitled to relief as requested.

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1 **B. JURISDICTION AND SERVICE**

2 This action arises under and is brought pursuant to section 502 of the Employee Retirement
3 Income Security Act, as amended (ERISA), 29 U.S.C. § 1132, and section 301 of the Labor
4 Management Relations Act (LMRA), 29 U.S.C. § 185. The jurisdiction of this Court is founded on
5 28 U.S.C. § 1331.

6 Venue properly lies in this district court because a substantial part of the events and
7 omissions giving rise to these claims occurred in this district, including, but not limited to
8 Defendant’s master agreements with Plaintiffs, which requires that trust fund contributions are due
9 and payable in the County of San Francisco.

10 All parties have been served and appeared.

11 **C. LEGAL ISSUES**

12 1. What amounts, if any, are properly owed to the Trust Funds for contributions,
13 liquidated damages, interest, and audit costs for violations of the Defendant’s collective bargaining
14 agreement and Trust Agreements referenced therein.

15 2. Whether the Complaint in this action states a claim upon which relief can be
16 granted.

17 **D. MOTIONS**

18 Plaintiffs and Defendant anticipate settling this matter, but if it does not settle, Plaintiffs
19 anticipate filing a motion for summary judgment or summary adjudication.

20 **E. AMENDMENT OF PLEADINGS**

21 None anticipated, unless to add additional parties as revealed in discovery.

22 **F. EVIDENCE PRESERVATION**

23 The parties have taken necessary steps to preserve all relevant evidence presently in their
24 respective possession and control.

25 **G. DISCLOSURES**

26 The parties will exchange initial disclosures prior to the Case Management Conference.
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1 **H. DISCOVERY**

2 The parties do not agree to any limitation regarding discovery, other than the limitations
3 specified in the Federal Rules of Civil Procedure. The parties anticipate settling this matter and
4 have not agreed upon a discovery cut-off date at this time.

5 **I. CLASS ACTIONS**

6 The instant matter is not a class action.

7 **J. RELATED CASES PENDING**

8 None.

9 **K. RELIEF**

10 Plaintiffs pray judgment against Defendant, Vargas & Esquivel Construction, as follows:

- 11 1. That Defendant be ordered to pay Plaintiff Laborers Trust Funds contributions in
12 the amount of \$21,447.39, plus interest thereon;
- 13 2. That Defendant be ordered to pay Plaintiff Laborers Trust Funds liquidated
14 damages and interest in the amount of \$15,623.25, plus interest thereon;
- 15 3. That Defendant be ordered to pay Plaintiff Cement Masons Trust Funds
16 contributions in the amount of \$35,033.15, plus interest thereon;
- 17 4. That Defendant be ordered to pay Plaintiff Cement Masons Trust Funds liquidated
18 damages and interest in the amount of \$12,899.38, plus interest thereon;
- 19 5. That Defendant be ordered to pay each the Plaintiffs actual damages according to
20 proof;
- 21 6. That this Court issue an Order directing and permanently enjoining Defendant to
22 submit to the Trust Funds, all reports and contributions due and owing by Defendant, plus interest,
23 attorneys' fees, and costs as provided in ERISA sections 502(a)(3) and (g)(2) (29 U.S.C. §
24 1132(a)(3), (g)(2);
- 25 7. That this Court issue an Order permanently enjoining Defendant for so long as it
26 remains obligated to contribute to the Trust Funds, from failing, neglecting, or refusing to timely
27 submit required monthly contributions reports and payments as required by the terms of the
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1 collective bargaining agreements, Trust Agreements and ERISA sections 502(a)(3) and (g)(2) (29
2 U.S.C. § 1132(a)(3), (g)(2));

3 8. That Defendant be ordered to pay attorney's fees;

4 9. That Defendant be ordered to pay costs of suit herein;

5 10. That Defendants be ordered to submit to an audit by Plaintiffs;

6 11. That this Court grant such further relief as this Court deems just and proper; and

7 12. That this Court retain jurisdiction of this matter to enforce the Order compelling an

8 Audit and payment of all amount found due and owing.

9 **L. ADR**

10 The parties agree to participate in court-sponsored settlement conference and/or mediation.

11 **M. CONSENT TO ASSIGNMENT OF THIS CASE TO A UNITED STATES
12 MAGISTRATE JUDGE FOR TRIAL:**

13 Neither of the parties consents to assignment of this case to a United States Magistrate

14 Judge for trial.

15 **N. OTHER REFERENCES**

16 The case is not suitable to binding arbitration, a special master or the Judicial Panel.

17 **O. NARROWING OF ISSUES**

18 Plaintiffs believe that the issues may be narrowed by means of a motion for summary
19 judgment or summary adjudication.

20 **P. EXPEDITED SCHEDULE**

21 The case is not suited for expedited scheduling.

22 **Q. SCHEDULING**

23 The Parties anticipate settling this matter and have not agreed upon a schedule.

24 **R. TRIAL**

25 Defendant has demanded a jury trial.

26 **S. CONTINUANCE OF CASE MANAGEMENT CONFERENCE**

27 The parties have already commenced settlement negotiations and Defendant has agreed to
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1 allow Plaintiffs audit entry to audit their payroll records to see what, if any, additional fringe
2 benefit contributions are owed. Plaintiffs' legal counsel has indicated that she will be on vacation
3 on the day of the case management conference, and as lead trial counsel, she requests the ability to
4 attend the conference herself. For these reasons, the Parties respectfully request by a Stipulation
5 attached hereto that this Case Management Conference be continued for at least 60 days.

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Dated: March 13, 2009

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

By: //s//
NICOLE M. PHILLIPS
Attorneys for Plaintiffs

Dated: March 13, 2009

FIRM

By: //s// Signature Authorized
GENE FARBER
Attorneys for Defendant

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~~[PROPOSED]~~ ORDER

The Case Management Statement and Proposed Order is hereby adopted by the Court and as per the Parties' request, the Parties are referred to Alternative Dispute Resolution and the Case Management Conference has been continued until: June 5, 2009

