

1 Muriel B. Kaplan, Esq. (SBN 124607)
 Michele R. Stafford, Esq. (SBN 172509)
 2 Shaamini A. Babu, Esq. (SBN 230704)
 SALTZMAN & JOHNSON LAW CORPORATION
 3 44 Montgomery Street, Suite 2110
 San Francisco, CA 94104
 4 (415) 882-7900
 (415) 882-9287 – Facsimile
 5 mkaplan@sjlawcorp.com
 mstafford@sjlawcorp.com
 6 sbabu@sjlawcorp.com

7 Attorneys for Plaintiffs

8

9

UNITED STATES DISTRICT COURT

10

FOR THE NORTHERN DISTRICT OF CALIFORNIA

11

BAY AREA PAINTERS AND TAPERS
 PENSION TRUST FUND, and its JOINT BOARD
 12 OF TRUSTEES; LES PROTEAU and CHARLES
 DEL MONTE, TRUSTEES; Et.Al.

Case No.: C08-5774 CW

**STIPULATED JUDGMENT AND
CONSENT TO MAGISTRATE**

13

Plaintiffs,

14

v.

15

TOP GUN ARCHITECTURAL FINISHES, INC.
 16 dba TOP GUN FINISHES, a California Corporation;
 RUBEN GONZALEZ, Individually; and MARCUS
 17 DEAN CHARLES, Individually,

18

Defendants.

19

IT IS HEREBY STIPULATED and AGREED (the “Stipulation”) by and between

20

Plaintiffs BAY AREA PAINTERS & TAPERS PENSION TRUST FUND, et al. (“Plaintiffs”) and

21

Defendants TOP GUN ARCHITECTURAL FINISHES, INC. dba TOP GUN FINISHES, a

22

California Corporation; RUBEN GONZALEZ, Individually; and MARCUS DEAN CHARLES,

23

Individually, (collectively “Defendants”), as follows:

24

25

1. Defendant entered into a valid Collective Bargaining Agreement with the

26

District Council 16 of the International Union of Painters and Allied Trades (hereinafter

27

"Bargaining Agreement"). This Bargaining Agreement has continued in full force and effect to

28

**STIPULATED JUDGMENT
 AND CONSENT TO MAGISTRATE
 Case No.: C08-5774 CW**

1 the present time.

2 2. Defendant has become indebted to the Trust Funds as follows:

3 April, 2008	Contributions (balance due)	\$1,343.32
	Liquidated Damages	\$562.30
4	Interest	\$38.82
5 May, 2008	Contributions (balance due)	\$6,569.79
6 June, 2008	Contributions (balance due)	\$.10
7 August, 2008	Contributions (balance due)	\$18,190.54
	Liquidated Damages	\$1,819.05
	Interest	\$470.96
8 October, 2008	Contributions (balance due)	\$.3
	Liquidated Damages	\$8,357.19
9	Interest	\$416.71
10 November, 2008	Contributions (balance due)	\$.42
	Liquidated Damages	\$3,174.43
11	Interest	\$152.20
12 December, 2008	Contributions (balance due)	\$.09
13 Subtotal		\$47,585.40
14 Attorney's Fees	Through March 4, 2009	\$3,898.50
15 Costs	Through January 30, 2009	\$1,419.10
16 TOTAL DUE		\$52,903.00

17 In addition to the amounts due above, the Northern California Painters Master Agreement
18 between District Council 16 and the NCPFC ("Agreement") requires at Article 19, Section 15, that
19 Defendants post a bond "*within ten (10) days of the mailing of notice by the Administrator of the*
20 *Trust Funds...(in) amounts to be determined by said Administrator.*" Defendants are required to
21 post a bond in the amount of \$147,760, within 45 days of the execution of this Stipulated
22 Judgment by Defendants. In the event Defendants are unable to obtain a bond, a cash deposit in
23 lieu of bond must be posted with the Trust Funds' Administrator or other suitable / acceptable
24 arrangements must be made with Plaintiffs. Failure to post a bond, or a cash deposit in lieu of
25 bond constitutes a default under the terms of this Stipulation.
26
27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. Defendants shall pay the amount of \$52,903.00 as follows:

(a) Beginning on March 25, 2009, and no later than the 25th day of each month thereafter for a period of 12 months, through and including February 25, 2010, Defendants shall pay to Plaintiffs the amount of \$4,578.00 per month. Payments may be made by joint check, to be endorsed prior to submission;

(b) Defendant shall have the right to increase the monthly payments at any time and there is no penalty for early payment. Defendants may request a “payout demand” at any time during the payment period;

(c) Payments shall be applied first to unpaid interest and then to unpaid principal. The unpaid principal balance shall bear interest at the rate of 7% per annum in accordance with Plaintiffs’ Trust Agreements.

(d) Payments shall be made payable to the “*District Council 16 Health and Welfare Trust Fund*,” and delivered to Michele R. Stafford at Saltzman & Johnson Law Corporation, 44 Montgomery Street, Suite 2110, San Francisco, California 94104, **to be received on or before the 25th day of each month**, or to such other address as may be specified by Plaintiffs.

(e) Prior to the last payment pursuant to this Stipulation, Plaintiffs will advise Defendant as to the final amount due, including interest and additional attorneys’ fees and costs.

4. Michael LaVoy acknowledges that he is the President of TOP GUN ARCHITECTURAL FINISHES, INC. dba TOP GUN FINISHES, and Michael Martinez is the secretary and that both specifically consent to the Court’s jurisdiction, as well as the use of a Magistrate Judge for all proceedings herein. Mr. LaVoy and Mr. Martinez (hereinafter collectively “guarantors”) confirm that they are both personally guaranteeing the amounts due pursuant to the terms of this Stipulation and further acknowledge that all successors in interest to TOP GUN ARCHITECTURAL FINISHES, INC. dba TOP GUN FINISHES shall also be bound by the terms of this Stipulation as Guarantors, and also consent to this Court’s jurisdiction as well as the use of a Magistrate Judge.

1 5. For any work performed by employees of Defendant, beginning with hours worked
2 by Defendant's employees, if any, during the month of January 2009, Defendant shall timely pay
3 contributions due on March 15, 2009, and delinquent if not received by March 31, 2009. For
4 every month thereafter during the stipulated payment term herein, Defendant will remain current
5 in contributions and all other obligations due to Plaintiffs under the terms of the Collective
6 Bargaining Agreement by timely submitting monthly reports and contributions to the Trust Funds.
7 A copy of the contribution report and payment check must be faxed timely to Michele R. Stafford
8 at 415-882-9287.

9 In the event that additional amounts are found due, by pay stubs, certified payroll, audit or
10 in any other manner, for hours worked during the time period covered by this Stipulation as
11 referenced above, or due for hours worked for any time during the stipulated payment period,
12 these amounts shall be added to, and become part of this Judgment. The parties acknowledge that
13 there has been a change in ownership relative to Defendant, and that there were, and may still be
14 errors in reporting or calculation. Prior to the amounts becoming part of the Judgment, Plaintiffs
15 will provide Defendant with notice of the additional amounts found due, as well as supporting
16 documentation. Defendant will have the opportunity to contest the amounts to be added.

17 Conversely, in the event that Defendant discovers errors in reporting or calculation that
18 would reduce the amount set forth in paragraph two (2) of this Stipulation, Plaintiff, after
19 confirmation of the same will reduce the amount owing by Defendant accordingly

20 6. In the event that Defendant/Guarantor fails to make any payment referenced herein
21 in a timely manner as required, or fails to post the bond or a cash deposit in lieu of bond, or if
22 payment is made and fails to clear the bank, or is unable to be negotiated for any reason,
23 Defendant/Guarantor shall be considered to be in default of this Stipulation.

24 7. In the event of a default, Plaintiffs will provide Defendant/Guarantor with written
25 notice of the default, allowing seven (7) days from the date of the notice in which to cure the
26 default. The notice will be sent to Gregory McDonald, counsel for Defendants. All future
27 payments shall be made by cashier's check if the default was caused by a failed check. In the

28

1 event that a default is not timely cured, the following will occur:

2 (a) The entire balance of \$52,903.00 as specified in paragraph 3, plus interest
3 as specified above, but reduced by principal payments received from Defendant/Guarantor, in
4 addition to any unpaid contributions then due plus 10% liquidated damages and 7% per annum
5 interest thereon, shall be immediately due and payable, together with any additional reasonable
6 attorneys' fees and costs incurred in this matter.

7 (b) A writ of execution may be obtained against Defendant/Guarantor in the
8 amount of the unpaid balance, plus any additional amounts under the terms herein, upon
9 declaration by a duly authorized representative of the Plaintiffs setting forth any payment
10 theretofore made by or on behalf of Defendant/Guarantor and the balance due and owing as of the
11 date of default. Defendant/Guarantor specifically consents to the authority of a Magistrate Judge
12 for all proceedings, including, but not limited to, Plaintiffs' obtaining a writ of execution herein.
13 Plaintiffs agree to provide counsel for Defendants, Gregory McDonald, with a courtesy notice of
14 the application for Writ of Execution at the time that it is made.

15 (c) Defendant/Guarantor expressly waives all rights to stay of execution and
16 appeal. The declaration or affidavit of a duly authorized representative of Plaintiffs as to the
17 balance due and owing as of the date of default shall be sufficient to secure the issuance of a Writ
18 of Execution, without notice to Defendant/Guarantor.

19 (d) Defendant/Guarantor shall pay all additional reasonable costs and attorneys'
20 fees incurred by plaintiffs in connection with collection and allocation of the amounts owed to
21 plaintiffs under this Stipulation regardless of whether or not Defendant/Guarantor defaults herein.

22 8. In the event of the filing of a bankruptcy petition by the Defendant/Guarantor, the
23 parties agree that any payments made pursuant to the terms of this Judgment, shall be deemed to
24 have been made in the ordinary course of business as provided under 11 U.S.C. Section 547(c)(2)
25 and shall not be claimed by Defendant/Guarantor as a preference under 11 U.S.C. Section 547 or
26 otherwise. Defendant/Guarantor nevertheless represents that no bankruptcy filing is anticipated.

27 9. Any failure on the part of the Plaintiffs to take any action against

28

-5-
STIPULATED JUDGMENT
AND CONSENT TO MAGISTRATE
Case No.: C08-5774 CW

1 Defendant/Guarantor as provided herein in the event of any breach of the provisions of this
2 Stipulation shall not be deemed a waiver of any subsequent breach by the Defendant/Guarantor of
3 any provisions herein.

4 10. Should any provision of this Stipulation be declared or determined by any court of
5 competent jurisdiction to be illegal, invalid, or unenforceable, the legality, validity, and
6 enforceability of the remaining parts, terms or provisions shall not be affected thereby and said
7 illegal, unenforceable or invalid part, term, or provision shall be deemed not to be part of this
8 Stipulation.

9 11. This Stipulation is limited to the agreement between the parties with respect to the
10 delinquent contributions and related sums enumerated herein, owed by Defendant/Guarantor to the
11 Plaintiffs. This Stipulation does not in any manner relate to withdrawal liability claims, if any.
12 Defendant/Guarantor acknowledges that the Plaintiffs expressly reserve their right to pursue
13 withdrawal liability claims, if any, against Defendant/Guarantor as provided by the Plaintiffs' Plan
14 Documents, Trust Agreements incorporated into their Collective Bargaining Agreement, and the
15 law.

16 12. All parties represent and warrant that they have had the opportunity to be or have
17 been represented by counsel of their own choosing in connection with entering this Stipulation
18 under the terms and conditions set forth herein, and that they enter into this Stipulation voluntarily.

19 13. This Stipulation may be executed in any number of counterparts and by facsimile,
20 each of which shall be deemed an original and all of which shall constitute together one and the
21 same instrument.

22 14. Plaintiffs reserve all rights available under the applicable Bargaining Agreement
23 and Declarations of Trust of the Trust Funds for collection of current and future contributions, and
24 for any additional past contributions not included herein as may be determined by Plaintiffs,
25 pursuant to employee timecards or paystubs, by audit, or other means, and the provisions of this
26 agreement are in addition thereto. Defendants specifically waive the defense of the doctrine res
27 judicata as to any such additional amounts determined as due.

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: March 19, 2009

**TOP GUN ARCHITECTURAL FINISHES,
INC. dba TOP GUN FINISHES**

By: Michael Lavoy /S/
MICHAEL LAVOY
President

Dated: March 19, 2009

MICHAEL LAVOY

Michael Lavoy /S/
Individually

Dated: March 19, 2009

MIKE MARTINEZ

Mike Martinez /S/
Individually

Dated: March 23, 2009

**SALTZMAN AND JOHNSON LAW
CORPORATION**

Michele R. Stafford /S/
Michele R. Stafford
Attorneys for Plaintiffs

APPROVED AS TO FORM

Dated: March 19, 2009

**LAW OFFICES OF GREGORY D.
MCDONALD**

Gregory D. McDonald /S/
Gregory D. McDonald
Attorneys for Defendants

IT IS SO ORDERED.

3/25

Dated: _____, 2009



UNITED STATES DISTRICT COURT JUDGE

-7-
STIPULATED JUDGMENT
AND CONSENT TO MAGISTRATE
Case No.: C08-5774 CW