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6 Attorneys for Plaintiffs

7 UNITED STATES DISTRICT COURT

8 FOR THE NORTHERN DISTRICT OF CALIFORNIA

9 OPERATING ENGINEERS' PENSION
 TRUST FUND; GIL CROSTHWAITE and
 10 RUSS BURNS, as Trustees,

11 Plaintiffs,
 vs.

12 CLARKS WELDING AND MACHINE, et al.,
 13 Defendants.

Case No.: C09-0044 SC

**PLAINTIFF' REQUEST FOR LEAVE
 TO FILE STATEMENT OF RECENT
 DECISION IN SUPPORT OF
 PLAINTIFFS' MOTION FOR
 SUMMARY JUDGMENT;
 DECLARATION OF SHAAMINI A.
 BABU IN SUPPORT THEREOF; AND
 [PROPOSED] ORDER**

[Local Rule 7-3(d)]

16 I, Shaamini A. Babu, declare that I have personal knowledge of the following facts and if called as
 17 a witness I could testify competently thereto:

18 1. I am an attorney licensed to practice law in the State of California. I am an
 19 associate at Saltzman & Johnson Law Corporation, attorneys for Plaintiffs herein.

20 2. On October 30, 2009, Plaintiffs filed their Motion for Summary Judgment in this
 21 action. Docket No. 50.

22 3. Defendants filed their Opposition to Plaintiffs' Motion for Summary Judgment on
 23 November 13, 2009. Docket No. 77.

24 4. Thereafter, Plaintiffs' filed their Reply Brief on November 19, 2009. Docket No.
 25 78.

26 5. On November 30, 2009, this Court vacated the hearing on the Motion for Summary
 27 Judgment and stated it would be deciding said motion on the papers. Docket No. 90.

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1 6. Pursuant to the Court's November 30th Order, Defendants' filed a Sur-Reply on
2 December 3, 2009. Docket No. 91.

3 7. Neither the Defendants nor the Plaintiffs have cited the following relevant decision
4 that was issued on November 3, 2009, in any papers relating to the Motion for Summary
5 Judgment: *Amalgamated Lithographers of America Lithographic Industry Pension Plan v. UNZ &*
6 *So. Incorp.*, 2009 U.S. Dist. Lexis 108324 at *33-36 (S.D.N.Y. Nov. 3, 2009) (holding that if
7 laches is claimed as a defenses to a claim for withdrawal liability, the issue must be arbitrated.)

8 8. The Motion for Summary Judgment is still under submission with the Court. On
9 December 11, 2009, the Court issued an order requesting supplement briefs relating to the impact
10 of Tracy Mainguy's continued deposition on said motion. Docket No. 105. Pursuant to said order,
11 Defendants supplement brief is due on January 15, 2010, and Plaintiffs' supplement brief is due on
12 January 20, 2010.

13 9. This Court's Civil Local Rules 7-3(d) provides:

14 **Supplementary Material.** Before the noticed hearing date, counsel may bring to
15 the Court's attention a relevant judicial opinion published after the date the
16 opposition or reply was filed by serving and filing a Statement of Recent Decision,
17 containing a citation to and providing a copy of the new opinion—without argument.
Otherwise, once a reply is filed, no additional memoranda, papers or letters may be
filed without prior Court approval.

18 10. The decision in *UNZ & So. Incorp.* was issued and filed ten (10) days before
19 Defendants' Opposition was filed and sixteen (16) days before Plaintiffs' Reply Brief was filed.
20 Although it was issued and filed on November 3, 2009, it was not available online at
21 www.lexisnexis.com until November 21, 2009. The decision has not yet been published in an
22 official or unofficial reporter. It was recently brought to the attention of Plaintiffs' counsel while
23 conducting research online at www.lexisnexis.com, the online research system utilized by
24 Plaintiffs' counsel. Thus, Plaintiffs seek leave of Court to file a Statement of Recent Decision in
25 accordance with Local Rule 7-3(d).
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11. Although the decision was not issued by a court in this jurisdiction, Plaintiffs' counsel seek leave to file a Statement of Recent Decision in accordance with Local Rule 7-3(d) since the decision is relevant to the Motion for Summary Judgment and thus, may be persuasive to this Court when it considers and rules on the pending Motion for Summary Judgment.

12. Based on the foregoing, Plaintiffs respectfully request the Court to grant leave for Plaintiffs to file a Statement of Recent Decision pursuant to Local Rule 7-3(d) within three (3) days from the date of the Court's order.

I declare under penalty of perjury that the foregoing is true and correct and that this Declaration was executed upon this 5th day of January, 2010, at San Francisco, California.

Dated: January 5, 2010

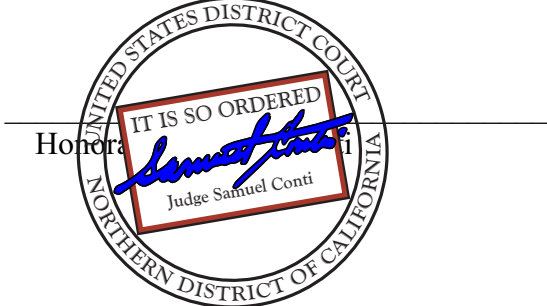
SALTZMAN & JOHNSON LAW CORPORATION

By: _____ /s/
Shaamini A. Babu
Attorneys for Plaintiffs

IT IS SO ORDERED.

This Court hereby grants leave under Local Rule 7-3(d) for Plaintiffs to file a Statement of Recent Decision within three (3) days from the date of this Order.

Date: January 7, 2010



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PROOF OF SERVICE

I, the undersigned, declare:

I am a citizen of the United States and am employed in the County of San Francisco, State of California. I am over the age of eighteen and not a party to this action. My business address is 44 Montgomery Street, Suite 2110, San Francisco, California 94104.

On January 5, 2010, I served the following document(s):

**PLAINTIFF' REQUEST FOR LEAVE TO FILE STATEMENT OF RECENT DECISION
IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT;
DECLARATION OF SHAAMINI A. BABU IN SUPPORT THEREOF;
AND [PROPOSED] ORDER**

on the interested parties in said action by First Class U.S. Mail, by placing a true and exact copy of each document in a sealed envelope with postage thereon fully prepaid, in a United States Post Office box in San Francisco, California, addressed as follows:

///

**Cassandra M. Ferrannini
DOWNEY BRAND LLP
621 Capitol Mall, 18th Floor
Sacramento, CA 95814**

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on this 5th day of January, 2010, at San Francisco, California.

Catherine Jemera