| 1                    | BARRY E. HINKLE, Bar No. 071223   |  |
|----------------------|---|--|
| 2                    | PATRICIA A. DAVIS, Bar No. 179074<br>CONCEPCIÓN E. LOZANO-BATISTA, Bar No. 227227           |  |
| 3                    | WEINBERG, ROGER & ROSENFELD A Professional Corporation                                      |  |
| 4                    | 1001 Marina Village Parkway, Suite 200<br>Alameda, California 94501-1091                    |  |
| 5                    | Telephone (510) 337-1001<br>Facsimile (510) 337-1023  |  |
| 6                    | 1 acsimile (310) 337-1023   |  |
| 7                    | UNITED STATES DISTRICT COURT  |  |
| 8                    | NORTHERN DISTRICT OF CALIFORNIA   |  |
| 9                    | THE BOARD OF TRUSTEES, in their   | ) No. CV 09 2937 SC                                  |
| 10                   | capacities as Trustees of the LABORERS HEALTH AND WELFARE TRUST FUND                        |  |
| 11                   | FOR NORTHERN CALIFORNIA; LABORERS VACATION-HOLIDAY TRUST FUND FOR                           | )<br>) STIPULATION AND <del>[PROPOSED]-</del>        |
| 12                   | NORTHERN CALIFORNIA; LABORERS<br>PENSION TRUST FUND FOR NORTHERN                            | ORDER TO VACATE HEARING ON MOTION TO DISMISS AND FOR |
| 13                   | CALIFORNIA; and LABORERS TRAINING AND RETRAINING TRUST FUND FOR                             | FILING OF FIRST AMENDED COMPLAINT                    |
| 14                   | NORTHERN CALIFORNIA; NORTHERN<br>CALIFORNIA DISTRICT COUNCIL OF                             | )  |
| 15                   | LABORERS for itself and on behalf of LABORERS' LOCAL 304                                    | )<br>)   |
| 16                   | Plaintiffs,   | )<br>)   |
| 17                   | v.  | )<br>)   |
| 18                   | EDWIN OLIVER DE SILVA, Individually;  | )<br>)   |
| 19                   | EDWIN OLIVER DE SILVA, Individually and doing business as DE SILVA GATES                    | )<br>)   |
| 20                   | CONSTRUCTION; DE SILVA GATES CONSTRUCTION; DB ELECTRIC, INC., A                             | )<br>)   |
| 21                   | California Corporation; and D & E CONSTRUCTION, INC., A California                          |  |
| 22                   | Corporation,  |  |
| 23                   | Defendants.   |  |
| 24                   | D & E CONSTRUCTION, INC., A California Corporation,   | )<br>)   |
| 25                   | Cross-Claimant,   | )<br>)   |
| 26                   | v.  | )<br>)   |
| 27                   | DE SILVA GATES CONSTRUCTION; TRAVELERS CASUALTY AND SURETY CORMANIX OF AMERICA (TRAVELERS); |  |
| 28<br>ROGER &<br>ELD | COPMANY OF AMERICA (TRAVELERS);   |  |

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Alameda, CA 94501-1091 (510) 337-1001

Stipulation and [Proposed] Order to Vacate Hearing on Motion to Dismiss and for Filing of First Amended Complaint Case No. CV 09 2937 SC

| 1<br>2<br>3<br>4<br>5<br>6<br>7  | THE BOARD OF TRUSTEES, in their capacities as Trustees of the LABORERS HEALTH AND WELFARE TRUST FUND FOR NORTHERN CALIFORNIA; LABORERS VACATION-HOLIDAY TRUST FUND FOR NORTHERN CALIFORNIA; LABORERS PENSION TRUST FUND FOR NORTHERN CALIFORNIA; and LABORERS TRAINING AND RETRAINING TRUST FUND FOR NORTHERN CALIFORNIA; NORTHERN CALIFORNIA DISTRICT COUNCIL OF LABORERS for itself and on behalf of LABORERS' LOCAL 304 |  |
|--|--|--|
| 8<br>9<br>10   | The undersigned parties hereby stipulate and request that the Court remove the October 9, 2009 hearing on the Motion to Dismiss in the above-captioned matter from the Court's Calendar to   |  |
| 11   | allow Defendant and Cross-Claimant D&E Construction, Inc. to file a First Amended Cross-   |  |
| 12   | Complaint against Plaintiffs and Cross-Defendants in this action. The parties agree that D&E Construction, Inc. will file such amended Cross-Complaint by October 2, 2009.   |  |
| 13   | Construction, me. win the such amended Cross-Complaint by October 2, 2009.   |  |
| 14   | Dated: September 18, 2009.   |  |
| 15   | WEINBERG, ROGER & ROSENFELD A Professional Corporation   |  |
| 16   | //s//  |  |
| 17   | CONCEPCIÓN E. LOZANO-BATISTA<br>Attorney for Plaintiffs/Cross-Defendants   |  |
| 18   |  |  |
| 19   | Dated: September 18, 2009.   |  |
| 20<br>21   | By://s//<br>NATHAN D. IDE  |  |
| 22   | Attorney for Defendant/Cross-Claimant  |  |
| 23   | ORDER  |  |
| 24   | The Court approves the terms of the above Stipulation and the parties are ordered to   |  |
| 25   | comply with this Order. In addition the Court orders:  |  |
| 26   | Dated: September 25, 2009  |  |
| 27   | Dated: SCPICINOCI 23, 2009   |  |
| 28 WEINBERG, ROGER & ROSENFELD A Professional Corporation 1001 Marina Village Parkway Suite 200 Alameda, CA 94501-1091 | The Hora Judge Samuel Continued Stipulation and [Proposed] Order to Vacate Hearing on Motion to Dismiss and for Filing of First Amended Complaint Case No. CV 09 2937 SC   |  |
| (510) 337-1001   |  |  |