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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BRICKLAYERS AND ALLIED CRAFTWORKERS) Case No. CV 10-3983 JL
LOCAL UNION NO. 3, AFL-CIO;)
TRUSTEES OF THE NORTHERN CALIFORNIA)
TILE INDUSTRY PENSION TRUST; TRUSTEES) JOINT CASE MANAGEMENT
OF THE NORTHERN CALIFORNIA TILE) STATEMENT;
INDUSTRY HEALTH AND WELFARE TRUST FUND;) ~~[proposed]~~ ORDER RESETTNG
TRUSTEES OF THE NORTHERN CALIFORNIA) CASE MANAGEMENT
TILE INDUSTRY APPRENTICESHIP) CONFERENCE
AND TRAINING TRUST FUND; TILE INDUSTRY)
PROMOTION FUND OF NORTHERN CALIFORNIA,)
INC., a not-for-profit California corporation;)
TILE EMPLOYERS CONTRACT ADMINISTRATION)
FUND; TRUSTEES OF THE INTERNATIONAL)
UNION OF BRICKLAYERS AND ALLIED)
CRAFTWORKERS PENSION FUND,)

Plaintiffs,

vs.

PAVONE TILE AND MARBLE CO., INC., a California)
corporation; AMERICAN CONTRACTORS INDEMNITY)
COMPANY, a California corporation,)

Defendants.

Pursuant to this Court's Civil Local Rule 16-9 and FRCivP 16(b), Plaintiffs and

1 Defendant American Contractors Indemnity Company hereby submit this Case Management
2 Statement And Proposed Order.

3 Plaintiffs respectfully request that the Court continue the Case Management Conference
4 currently scheduled for December 15, 2010 for 120 days, until April 13, 2011, for the following
5 reasons.

6 Plaintiffs intend to amend the Complaint in this matter to include several more
7 defendants. Plaintiffs are in the process of gathering the information necessary to state their
8 claims against these additional defendants, and expect to be ready to file their First Amended
9 Complaint in approximately three weeks. Plaintiffs also wish to amend the Complaint to allege
10 further amounts owed by Defendant Pavone Tile and Marble Co. Inc., ("Pavone"). Plaintiffs do
11 not anticipate adding any new claims against the only defendant that has appeared, American
12 Contractors Indemnity Company ("ACIC"). Plaintiffs intend to seek a stipulation from ACIC
13 regarding the filing of Plaintiffs First Amended Complaint, rather than moving the Court for
14 leave to file the First Amended Complaint.

15 A 120 day continuance will allow Plaintiffs to gather the information necessary to
16 prepare their First Amended Complaint, file the First Amended Complaint, serve all Defendants
17 with the First Amended Complaint and allow enough time to get the pleadings settled. Should
18 Pavone or any of the new defendants not answer or otherwise respond to the complaint, the 120
19 day continuance would give Plaintiffs sufficient time to request the entry of those Defendants'
20 defaults and properly notice a motion for default judgment.

21 Both ACIC and Pavone were served with the Complaint by September 23, 2010. (See
22 Document 6 herein). ACIC has answered the Complaint. (Document 5) Pavone, whose answer
23 was due on or before October 14, 2010, has not answered or otherwise appeared.

24 **A. STATEMENT OF FACTS AND EVENTS UNDERLYING THE ACTION**

25 Plaintiff, INTERNATIONAL UNION OF BRICKLAYERS AND ALLIED
26 CRAFTSMEN AFL-CIO, LOCAL UNION NO. 3 (hereinafter the "Union") and Defendant
27 Pavone were parties to a collective bargaining agreement (the "Agreement") at all times material
28 to this action. Pursuant to the terms of the Agreement, Pavone agreed to pay certain wages and

1 fringe benefits for all hours worked in the 46 Northern California counties within the Union's
2 geographic jurisdiction by persons employed by Pavone as tile layers and tile setters.

3 Plaintiffs Complaint alleges that Pavone has breached the Agreement and violated
4 provisions of the Employee Retirement Income Security Act of 1974 ("ERISA"), by refusing or
5 failing to: (i) to pay fringe benefit contributions for work performed during May, 2010 and from
6 July 1, 2010 to the present totaling at least \$15,768.61 and interest thereon; (ii) to pay fringe
7 benefits and wages when due; (iii) to pay liquidated damages in the amount of at least \$4,256.50
8 and interest on late payments of fringe benefits as agreed; and (iv) to submit monthly report
9 forms covering July 1, 2010 to present. Plaintiffs will amend their Complaint to allege further
10 amounts due by Pavone.

11 Plaintiffs allege that Pavone obtained a contractor's license bond underwritten by ACIC
12 pursuant to California Business and Professions Code section 7071.6. This bond indemnifies
13 persons employed by Pavone for Pavone's failure to pay full wage and fringe benefit
14 contributions due.

15 **B. PRINCIPAL ISSUES**

16 **1. The principal factual issues that the parties dispute are:**

17 ACIC disputes liability under the bond..

18 **2. The principal legal issues that the parties dispute are:**

19 Whether Pavone was covered by the contractor's license bond at the time of the
20 delinquencies;

21 Whether Plaintiffs complied with the notice and limitations provisions of the
22 bond.

23 **3. The following issues as to service of process, personal jurisdiction, subject matter 24 jurisdiction or venue remain unresolved:**

25 None.

26 **4. The following parties have not yet been served:**

27 None.

28 **5. Any additional parties that a party intends to join are listed below:**

1 Plaintiffs intend to amend the Complaint to add several additional parties..

2 **6. Any additional claims that a party intends to add are listed below:**

3 Plaintiffs will add additional claims to the added parties in the First Amended
4 Complaint..

5 **C. ALTERNATIVE DISPUTE RESOLUTION**

6 **The parties make the following additional suggestions concerning settlement:**

7 Plaintiffs request a settlement conference before a United States Magistrate
8 Judge.

9 **The Court hereby orders:**

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13 **D. CONSENT TO JURISDICTION BY A MAGISTRATE JUDGE**

14 Plaintiffs consent to proceed before a magistrate judge and filed their consent to proceed
15 before a magistrate judge on September 8, 2010 as document 4 herein.

16 **The Court hereby refers this case for the following purposes to a magistrate judge:**

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19
20 **E. DISCLOSURES**

21 **The parties certify that they have made the following disclosures:**

22 The parties have not made any initial disclosures. Plaintiffs have provided ACIC with
23 documents supporting their claim that Pavone has failed to make fringe benefit contributions as
24 required. The parties shall serve their initial disclosures after the pleadings are settled.

25 **1. Persons disclosed pursuant to FRCivP Rule 26(a)(1):**

26 **a. Disclosed by plaintiffs:**

27 None.

28 **b. Disclosed by Defendants:**

1 None.

2 **2. Categories of documents disclosed under FR CivP Rule 26(a)(1) or produced**
 3 **through formal discovery:**

4 **a. Categories of documents disclosed by Plaintiffs:**

5 None.

6 **b. Categories of documents disclosed by Defendants:**

7 None.

8 **3. Each party who claims an entitlement to damages or an offset sets forth**
 9 **the following preliminary computation of the damages or of the offset:**

10 On the basis of reports submitted to Plaintiffs by Pavone,, Plaintiffs believe that the
 11 amount owed to Plaintiffs is at least \$207,712.01, calculated as follows:

12	Principal Owed:	\$175,913.51
13	Liquidated Damages	35,182.70
14	Attorney's Fees (to 11/23)	4,516.50+
15	SUBTOTAL	\$215,612.71
16	Credit for Payment received 11/8/10	(7,900.70)
17	TOTAL	\$207,712.01

18 This calculation excludes accruing interest, additional attorney's fees and all costs, all of
 19 which Plaintiffs will seek as additional damages.

20 **4. All insurance policies as defined by FR CivP 26(a)(1)(D) have been disclosed as**
 21 **follows:**

22 None disclosed.

23 **5. The parties will disclose the following additional information by the date listed:**

24 Plaintiffs will serve their initial disclosures after filing and serving their First
 25 Amended Complaint and the additional Defendants answer or otherwise appear.

26 **6. Disclosures as required by FR CivP 26(e) will be supplemented at the following**
 27 **intervals:**

28 Every 30 days commencing May 1, 2011 if supplemental information is
 discovered.

F. EARLY FILING OF MOTIONS

1 **The following motions expected to have a significant effect either on the scope of**
2 **discovery or other aspects of the litigation shall be heard by the date specified below:**

3 Should Pavone or the additional Defendants not answer or otherwise appear,
4 Plaintiffs will request that the Clerk enter those Defendants' defaults and then file a
5 motion for default judgment.

6
7 **G. DISCOVERY**

8 **1. The parties have conducted or have underway the following discovery:**

9 None.

10 **2. The parties propose the following discovery plan:**

11 The deadline for completion of all discovery, expert and non-expert be August 12,
12 2011 and that the dates for filing of dispositive motions will be October 7, 2011 and trial
13 be 90 days thereafter.

14 The parties are to disclose expert witnesses, if any (their identities, resumes, final
15 reports and other matters required pursuant to the Federal Rules of Civil Procedure) by
16 no later than June 10, 2011.

17 **3. Limitations on discovery tools.**

18 **a. depositions (excluding experts) by:**

19 **plaintiffs:** no limit **defendant:** no limit

20 **b. interrogatories served by:**

21 **plaintiffs:** 25

22 **defendants:** 25

23 **c. document production requests served by:**

24 **plaintiffs:** no limit **defendants:** no limit

25 **d. requests for admission served by:**

26 **plaintiffs:** no limit **defendants:** no limit

27 **4. The parties propose the following limitations on the subject matter of discovery:**

28 All matters relevant to or calculated to lead to the discovery of evidence relevant

1 to the issues raised by the complaint and defendants' answers to the complaint.

2 **5. Discovery from experts.**

3 None planned at this time.

4 **6. The Court orders the following additional limitations on the subject matter of**
5 **discovery:**

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9 **7. Deadlines for disclosure of witnesses and completion of discovery:**

10 See paragraph G(2) above.

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12 **H. PRETRIAL AND TRIAL SCHEDULE**

13 **1. Trial date:** None set.

14
15 **2. Anticipated length of trial (number of days):** 1 to 2 days.

16
17 **3. Type of trial:** Court.

18
19 **4. Final pretrial conference date:**

20
21 **5. Date required for filing the joint pretrial conference statement and proposed**
22 **pretrial order required by Civ.L.R. 16-10(b), complying with the provisions of Civ.L.R. 16-**
23 **10(b)(6)-(10) and such other materials as may be required by the assigned judge:**

24
25 **6. Date for filing objections under Civ.L.R. 16-10(b)(11) (objections to exhibits or**
26 **testimony):**

27
28 **7. Deadline to hear motions directed to the merits of all or part of the case:** See

1 paragraph G2 above.

2 **NOTE: Lead trial counsel who will try this case shall meet and confer at least 30**
3 **days prior to the pretrial conference for the purpose of Civ.L.R. 16-10(b) which includes**
4 **preparation of that joint pretrial conference statement and all other materials required by**
5 **§ H.5 above. Lead trial counsel shall also be present at the pretrial conference. (See**
6 **FRCivP 16(d).)**

7
8 **I. Date of next case management conference:**

9
10 **J. OTHER MATTERS**

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12 **K. IDENTIFICATION AND SIGNATURE OF LEAD TRIAL COUNSEL**

13
14 /s/ Kent Khtikian
15 Kent Khtikian, Esq.
16 Katzenbach and Khtikian
17 1714 Stockton Street, Suite 300
18 San Francisco, California 94133-2930
19 (415) 834-1778; FAX (415) 834-1842
20 Attorneys for Plaintiffs

21 /s/ Geoffrey Hudson
22 Geoffrey R. Hudson, Esq.
23 Hausman & Sosa, LLP
24 P.O. Box 2547
25 Napa, CA 94558
26 (707) 265-0900
27 Attorney for Defendant ACIC

28 **Attestation Of Concurrence**


I, Kent Khtikian, declare that Geoffrey R. Hudson has signed the Document set forth above and that I have in my possession his signature on this document.
I declare under penalty of perjury that the foregoing is true and correct.
Executed this 7th day of December 2010, in San Francisco, California.

/s/ Kent Khtikian
W. Kent Khtikian

1 Good cause appearing, the Court hereby orders that the Case Management Conference
2 scheduled for December 15, 2010 is rescheduled for April ~~15~~²⁰, 2011 at 10:30 a.m. A joint case
3 management conference statement shall be filed no later than April ~~15~~¹³, 2011.
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5 IT IS SO ORDERED
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8 Dated: December 8, 2010
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10 Hon. James Larson
11 United States Magistrate Judge
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PROOF OF SERVICE BY MAIL

I am a resident of the County of San Francisco, California. I am over the age of eighteen years and not a party to this action. My business address is Katzenbach and Khtikian, 1714 Stockton Street, Suite 300, San Francisco, California 94133. I served the within:

1. JOINT CASE MANAGEMENT STATEMENT; [proposed] ORDER RESETTING CASE MANAGEMENT CONFERENCE

on the parties remaining in the action herein, by placing a true copy thereof enclosed in a sealed envelope with first class postage thereon fully prepaid in the United States Mail at San Francisco, California, on December 7, 2010 addressed as follows:

Doug Pavone
Pavone Tile and Marble Co., Inc.
1124 Old Bayshore Hwy., #10
San Jose, CA 95112

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on December 7, 2010.

 /s/ Cheri Yau
 Cheri Yau