

1 Kent Khtikian, Esq. (#99843)
 2 Conor D. Mack, Esq. (#253878)
 3 Katzenbach and Khtikian
 4 1714 Stockton Street, Suite 300
 5 San Francisco, California 94133-2930
 6 Telephone: (415) 834-1778
 7 Facsimile: (415) 834-1842

8 Attorneys for Plaintiffs

9 Guarav Bobby Kalra, Esq. (#219483)
 10 Veda Counsel, Attorneys at Law
 11 770 L Street, Suite 950
 12 Sacramento, California 95814
 13 Telephone: (916) 492-6088
 14 Facsimile: (916) 492-6087

15 Attorney for Defendant
 16 CAPITOL CITY TILE AND MARBLE INC.

17 UNITED STATES DISTRICT COURT
 18 NORTHERN DISTRICT OF CALIFORNIA

19 TRUSTEES OF THE BRICKLAYERS LOCAL) CASE NO. CV 10-5160 MEJ
 20 NO. 3 PENSION TRUST; TRUSTEES OF THE)
 21 LOCAL NO. 7 PENSION TRUST; TRUSTEES)
 22 OF THE BRICKLAYERS LOCAL NO. 3)
 23 HEALTH AND WELFARE TRUST; TRUSTEES) JOINT CASE MANAGEMENT
 24 OF THE BRICKLAYERS AND ALLIED) STATEMENT;
 25 CRAFTS LOCAL NO. 3 APPRENTICE) ~~proposed~~ ORDER RESETTING CASE
 26 TRAINING TRUST; INTERNATIONAL UNION) MANAGEMENT CONFERENCE
 27 OF BRICKLAYERS AND ALLIED)
 28 CRAFTSMEN, AFL-CIO, LOCAL UNION NO. 3,)
 on behalf of itself and as agent for its members;)
 TRUSTEES OF THE INTERNATIONAL UNION)
 OF BRICKLAYERS AND ALLIED)
 CRAFTSMEN PENSION FUND; TRUSTEES OF)
 THE NORTHERN CALIFORNIA TILE)
 INDUSTRY PENSION TRUST; TRUSTEES OF)
 THE NORTHERN CALIFORNIA TILE)
 INDUSTRY HEALTH AND WELFARE TRUST)
 FUND; TRUSTEES OF THE NORTHERN)
 CALIFORNIA TILE INDUSTRY)
 APPRENTICESHIP AND TRAINING TRUST)
 FUND; TILE INDUSTRY PROMOTION FUND)
 OF NORTHERN CALIFORNIA, INC., a not-for-) Date: February 24, 2011
 profit California corporation; and TILE) Time: 10:00 a.m.
 EMPLOYERS CONTRACT ADMINISTRATION) Courtroom: B, 15th Floor
 FUND,) (San Francisco)

1 other two remaining defendants as well. Should Plaintiffs and Capitol City not be able to resolve
2 the matter, a 60 day continuance will allow Plaintiffs to sufficient time to serve the remaining
3 defendants who have not yet appeared.

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

5 Plaintiff, INTERNATIONAL UNION OF BRICKLAYERS AND ALLIED
6 CRAFTSMEN AFL-CIO, LOCAL UNION NO. 3 (hereinafter "Bricklayers Local Union No. 3")
7 and Defendant Capitol City were parties to collective bargaining agreements (the "Agreements")
8 at all times material to this action. Pursuant to the terms of the Agreements, Capitol City agreed
9 to pay certain wages and fringe benefits for all hours worked in the 45 Northern California
10 counties within the Union's geographic jurisdiction by persons employed by Capitol City as
11 marble, tile and PCC employees.

12 Plaintiffs allege that Capitol City has breached the Agreements and violated provisions of
13 the Employee Retirement Income Security Act of 1974 ("ERISA"), by refusing or failing to: (i)
14 to pay fringe benefit contributions for work performed totaling at least \$100,083.49 and interest
15 thereon; (ii) to pay fringe benefits and wages when due; (iii) to pay liquidated damages in the
16 amount of at least \$78,945.68 and interest on late payments of fringe benefits as agreed; and (iv)
17 to submit monthly report forms covering November 1, 2010 to present.

18 Plaintiffs allege that Capitol City obtained contractor's license bonds underwritten by
19 IFIC and ACIC pursuant to California Business and Professions Code section 7071.6. These
20 bonds indemnified persons employed by Capitol City for Capitol City's failure to pay full wage
21 and fringe benefit contributions due.

22 **B. PRINCIPAL ISSUES**

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

24 Capitol City disputes the amounts owed to Plaintiffs.

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

26 Capitol City disputes liability and alleges that Plaintiffs have unclean hands.

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

1 None.

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

3 Defendants International Fidelity Insurance Company and American Contractors
4 Indemnity Company have not yet been served as Plaintiffs have been negotiating a
5 resolution of their claims against those defendants.

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

7 None at this time.

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

9 None.

10 **C. ALTERNATIVE DISPUTE RESOLUTION**

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

12 Plaintiffs request a settlement conference before a United States Magistrate Judge.

13 **The Court hereby orders:**

14
15
16
17 **D. CONSENT TO JURISDICTION BY A MAGISTRATE JUDGE**

18 Plaintiffs consent to proceed before a magistrate judge and filed their consent to proceed
19 before a magistrate judge on November 17, 2010 as document 4 herein.

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

21
22
23
24
25 **E. DISCLOSURES**

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

27 On February 16, 2011 Plaintiffs served their initial disclosures on all Capitol City. Initial
28 disclosures have not yet been served by Capitol City.

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

2 **a. Disclosed by Plaintiffs:**

3 Tom Spear, President, BAC Local 3
4 Benay W. von Husen, Widlund Company Auditing Service "Widlund"
5 Sharon Turner, Allied Administrators
6 Robin Niznik, BeneSys Administrators
7 Roger Leasure, Capitol City
8 Karen Sorenson, Capitol City
9 Capitol City's employees from January 1, 2009 until present.

7 **b. Disclosed by Defendants:**

8 None.

9 **2. Categories of documents disclosed under FRCivP Rule 26(a)(1) or produced**
10 **through formal discovery:**

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

- 12 1. Collective Bargaining Agreements (Marble, Tile and PCC);
13 2. Plaintiffs' trust agreements;
14 3. Plaintiffs' trust fund records of defendant's reports and payments to the
15 plaintiffs' trust funds;
16 4. Correspondence between plaintiffs and defendant;
17 5. Trust records of payments made by Capitol City.
18 6. Union records of apprentices, members and registered pre-apprentices.
19 7. The forthcoming Audit Report to be prepared by Widlund Company Auditing
20 Service,
21 8. Correspondence between plaintiffs and the defendants already dismissed from
22 this action,
23 9. The Contractors' License Bond between Capitol City and defendant
24 International Fidelity Insurance Company,
25 10. The Contractors' License Bond between Capitol City and defendant American
26 Contractors Indemnity Company.

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

21 None.

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

24 On the basis of remittance reports submitted to plaintiffs by Capitol City, plaintiffs
25 believe that the principal amount owed to plaintiffs, after all just offsets for payments already
26 received, is at least \$28,501.79, calculated as follows:

27 Principal Owed:	\$100,083.49
28 Liquidated Damages:	78,945.68
Attorney's Fees (to 1/31/11):	<u>6,578.50+</u>

1	SUBTOTAL:	\$185,607.67
2	Credit for payments received since complaint filed:	<u>(157,105.88)</u>
3	TOTAL:	\$28,501.79

4 This calculation excludes any principal owed for work performed from November 1,
5 2010 to present and liquidated damages thereon, accruing interest, additional attorney's fees and
6 all costs, all of which plaintiffs will seek as additional damages.

7 **4. All insurance policies as defined by FRCivP 26(a)(1)(D) have been disclosed as follows:**

8 None disclosed.

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

10 Not required at this time.

11 **6. Disclosures as required by FRCivP 26(e) will be supplemented at the following intervals:**

12 Every 30 days commencing May 1, 2011 if supplemental information is
13 discovered.
14

15
16 **F. EARLY FILING OF MOTIONS**

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

19 Should a stipulated judgment not be entered into within 30 days, Plaintiffs will
20 serve IFIC and ACIC. Should either Defendant not answer, Plaintiffs will request their
21 default and move for default judgment. After discovery, Plaintiffs intend to file a motion
22 for summary judgment.
23

24 **G. DISCOVERY**

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

26 None.

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

28 The deadline for completion of all discovery, expert and non-expert be September

1 9, 2011 and that the dates for filing of dispositive motions will be November 4, 2011 and
2 trial be 90 days thereafter.

3 The parties are to disclose expert witnesses, if any (their identities, resumes, final
4 reports and other matters required pursuant to the Federal Rules of Civil Procedure) by
5 no later than July 8, 2011.

6 **3. Limitations on discovery tools.**

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

8 **plaintiffs:** no limit **defendant:** no limit

9 **b. interrogatories served by:**

10 **plaintiffs:** 25

11 **defendants:** 25

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

13 **plaintiffs:** no limit **defendants:** no limit

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

15 **plaintiffs:** no limit **defendants:** no limit

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

17 All matters relevant to or calculated to lead to the discovery of evidence relevant
18 to the issues raised by the complaint and defendants' answers to the complaint.

19 **5. Discovery from experts.**

20 None planned at this time.

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

23
24
25
26 **7. Deadlines for disclosure of witnesses and completion of discovery:**

27 See paragraph G(2) above.

28 ///

1 **H. PRETRIAL AND TRIAL SCHEDULE**

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

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

4 **3. Type of trial:** Court.

5
6 **4. Final pretrial conference date:**

7
8 **5. Date required for filing the joint pretrial conference statement and proposed**
9 **pretrial order required by Civ.L.R. 16-10(b), complying with the provisions of Civ.L.R. 16-**
10 **10(b)(6)-(10) and such other materials as may be required by the assigned judge:**

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

14
15 **7. Deadline to hear motions directed to the merits of all or part of the case:** See
16 paragraph G2 above.

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

22
23 **I. Date of next case management conference:**

24
25 **J. OTHER MATTERS**

26
27
28 **///**
///

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

2
3 /s/ Kent Khtikian
4 Kent Khtikian, Esq.
5 Katzenbach and Khtikian
6 1714 Stockton Street, Suite 300
7 San Francisco, California 94133-2930
8 (415) 834-1778; FAX (415) 834-1842
9 Attorneys for Plaintiffs

10 /s/ Guarav Kalra
11 Guarav Bobby Kalra, Esq. (#219483)
12 Veda Counsel, Attorneys at Law
13 770 L Street, Suite 950
14 Sacramento, California 95814
15 Telephone: (916) 492-6088
16 Attorney for Defendant CAPITOL CITY

17 **Attestation Of Concurrence**

18 I, Conor Mack, declare that Guarav Bobby Kalra has signed the Document set forth
19 above and that I have in my possession his signature on this document.

20 I declare under penalty of perjury that the foregoing is true and correct.

21 Executed this 17th day of February 2011, in San Francisco, California.

22 /s/ Conor Mack
23 Conor D. Mack

24 Good cause appearing, the Court hereby orders that the Case Management Conference
25 scheduled for February 24, 2011 is rescheduled for April 28, 2011 at 10:00 a.m. A joint case
26 management conference statement shall be filed no later than April 21, 2011.

27 IT IS SO ORDERED

28 Dated: February 17, 2011



Hon. Maria-Elena James
United States Chief Magistrate Judge