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UNITED STATES DISTRICT COURT

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FOR THE NORTHERN DISTRICT OF CALIFORNIA

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12 F. G. CROSTHWAITE, et al., as Trustees of
 the OPERATING ENGINEERS' HEALTH
 13 AND WELFARE TRUST FUND, et al.,

Case No.: C11-1440 SC

**THIRD AMENDED JUDGMENT
PURSUANT TO STIPULATION**

14 Plaintiffs,

15 v.

16 BCJ SAND & ROCK, INC., *aka* BCJ SAND
 AND ROCK CORPORATION, a California
 17 Corporation,

18 Defendant.

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20 IT IS HEREBY STIPULATED by and between the parties hereto, that this Third
 21 Amended Judgment Pursuant to Stipulation ("Third Amended Stipulation") shall be entered in the
 22 within action in favor of the Plaintiffs OPERATING ENGINEERS HEALTH AND WELFARE
 23 TRUST FUND, et al. (collectively "Plaintiffs" or "Trust Funds") and against Defendant BCJ SAND &
 24 ROCK, INC., *aka* BCJ SAND AND ROCK CORPORATION, a California Corporation, and/or
 25 alter egos and/or successor entities, and JAMES BRAD SLENDER *aka* BRAD SLENDER, as
 26 individual guarantor (collectively "Defendant"), as follows:

27 1. All provisions of the Second Amended and Restated Judgment Pursuant to
 28 Stipulation ("Second Amended Stipulation"), entered by the Court on June 18, 2012, shall remain in

1 full force and effect and incorporated herein, except paragraphs 2, 3, 6, and 11, which are
 2 amended and agreed as follows. References therein to Defendant shall include Guarantor.

3
 4 **Revised ¶2:**

5 2. The parties agree that Defendant remains indebted to the Trust Funds as follows:

		Principal	Liquidated Damages	Interest	Totals
	Second Amended Stipulation balance (as of 9/27/12)	\$17,004.59			
	Conditionally waived Liquidated Damages in Second Amended Stipulation		\$22,825.58		
	10% p/a Interest on Second Amended Stipulation Conditional Balance (9/28/12-12/17/12)			\$377.36	
					\$40,207.53
9/12	Contributions	\$5,120.73			
	20% Liquidated Damages		\$1,024.14		
	10% p/a Interest (10/26/12-12/17/12)			\$74.36	
					\$6,219.23
10/12	Contributions	\$6,989.89			
	20% Liquidated Damages		\$1,397.98		
	10% p/a Interest (11/26/12-12/17/12)			\$42.13	
					\$8,430.00
11/12	Contributions	\$7,496.40			
	20% Liquidated Damages		\$1,499.28		
					\$8,995.68
	SUB-TOTALS	\$36,611.61	\$26,746.98	\$493.85	\$63,852.44
	Attorneys' fees (6/7/12-12/15/12)			\$8,307.00	
	Costs (4/20/12-12/11/12)			\$2,863.00	
					\$11,170.00
	TOTAL – 3rd Amended Stipulation				\$75,022.44
	<i>Credit (Redwood Credit Union levy, received 12/6/12)</i>				<i><\$3,000.77></i>
	<i>Credits (Anticipated Levy proceeds (see Attachment A))</i>				<i><\$16,848.43></i>
	Balance due after receipt of Attachment A proceeds:				\$55,173.24

23
 24 **Revised ¶¶3(a), 3(e), 3(f):**

25 3. Personal guarantor James Brad Slender shall provide, no later than December 27,
 26 2012, evidence of personal assets that will cover the balance due under this Third Amended
 27 Stipulation. It is expressly agreed that the anticipated levy proceeds of \$19,856.20 remain due
 28 under Third Amended Stipulation until received.

1 Defendant shall *conditionally* pay the amount of **\$32,347.66**, representing all above
2 amounts, less the anticipated levy receipts and the conditionally waived liquidated damages in the
3 amount of **\$22,825.58**. *This conditional waiver is expressly conditioned upon timely compliance*
4 *with all of the terms of this Third Amended Stipulation*, as follows:

5 (a) Beginning on or before January 10, 2013, and continuing on or before the
6 10th day of each month thereafter, until all amounts due are paid in full, Defendant shall pay to
7 Plaintiffs the amount of **\$3,000.00** per month.

8 (e) Checks shall be made payable to the *Operating Engineers Local 3 Trust*
9 *Funds*, and delivered on or before each due date to Muriel B. Kaplan at Saltzman & Johnson Law
10 Corporation, 44 Montgomery Street, Suite 2110, San Francisco, California 94104, or to such other
11 address as may be specified by Plaintiffs, to be received on or before the 10th day of each month.

12 (f) Prior to the last payment due to satisfy this Third Amended Stipulation,
13 Plaintiffs shall advise Defendant, in writing, as to the final amount due, including interest and all
14 additional attorneys' fees and costs incurred by Plaintiffs in connection with collection and
15 allocation of the amounts owed to Plaintiffs under this Third Amended Stipulation. Defendant
16 shall pay all additional attorneys' fees and costs incurred following those included herein,
17 regardless of whether or not Defendant defaults herein. All additional amounts due pursuant to the
18 provisions hereunder shall be paid in full with the final stipulated payment.

19 **Revised ¶6:**

20 6. Beginning with contributions due for hours worked by Defendant's employees
21 during the month of December 2012, which are due by January 15, 2013, and for every month
22 thereafter, Defendant **shall remain current in reporting and payment of all contributions** due
23 to Plaintiffs under the current Collective Bargaining Agreements and under all subsequent
24 Collective Bargaining Agreements, if any, and the Declarations of Trust as amended. **Defendant**
25 **shall submit its contribution report for each month, together its payment check, to the Trust**
26 **Fund's designated P.O. Box. Defendant shall concurrently send a copy of that report and**
27 **payment by email to both mkaplan@sjlawcorp.com and vanessa@sjlawcorp.com, or by**
28 **facsimile to Muriel B. Kaplan at 415-882-9287, or to such other email or fax number as may**

1 **be specified by Plaintiffs.** Failure by Defendant to timely submit to Muriel B. Kaplan a copy of
2 its current contribution report and payment, or report of “no employees,” if applicable, shall
3 constitute a default of the obligations under this agreement and the provisions of ¶11 shall apply.

4 **Revised ¶11(a):**

5 In the event that Defendant fails to provide evidence of personal assets or make any
6 payment required under revised ¶3 above, or fails to remain current in any contributions under ¶6
7 above or fails to timely provide the monthly documents required by ¶¶6 and 7 herein, and such
8 default is not timely cured, the following will occur:

9 (a) The entire unpaid balance of the **\$75,022.44** total due, as specified in ¶3(d),
10 and any unpaid contributions then due, plus 20% liquidated damages and 10% per annum interest
11 on the unpaid or late paid contributions, shall be made a part of this Judgment and be immediately
12 due and payable, together with any additional attorneys’ fees and costs incurred during the term of
13 this Third Amended Stipulation.

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1 2. All other terms and provisions of the Second Amended and Restated Judgment
2 Pursuant to Stipulation shall continue to remain in full force and effect, and all references therein
3 to the Second Amended Stipulation shall mean and be incorporated into this Third Amended
4 Stipulation.

5 Dated: January 14, 2013

**BCJ SAND & ROCK, INC., aka BCJ SAND AND
ROCK CORPORATION**

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8 By: /S/James Brad Slender
 James Brad Slender aka Brad Slender
 Its RMO/CEO/President

9 Dated: January 30, 2013

JAMES BRAD SLENDER aka BRAD SLENDER

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12 By: /S/James Brad Slender
 James Brad Slender aka Brad Slender
 As Personal Guarantor

13 Dated: February 1, 2013

**OPERATING ENGINEERS' HEALTH &
WELFARE TRUST FUND, et al.**

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16 By: /S/David E. Hayner
 David E. Hayner
 Collections Manager, Operating Engineers' Health &
 Welfare Trust Fund, et al.

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18 IT IS SO ORDERED.

19 The Third Amended Judgment Pursuant to Stipulation is hereby entered.

20 IT IS FURTHER ORDERED that the Court shall retain jurisdiction over this matter.

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22 Dated: February 26 , 2013



THE HONORABLE SAMUEL CONTI
SENIOR JUDGE
UNITED STATES DISTRICT COURT

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ATTACHMENT A
to
THIRD AMENDED JUDGMENT PURSUANT TO STIPULATION

Crosthwaite, et al. v. BCJ Sand & Rock, Inc., et al.
USDC Case No. C11-1440 SC

Anticipated Levy Proceeds

Source	Amount
Redwood Credit Union	\$3,000.77 *
Sonoma Bank	\$7,914.44
Basalite Concrete Products	\$2,684.58
Boral Industries	\$572.30
Boral Industries	\$4,184.11
McNear Brick and Block	\$1,500.00
TOTAL	\$19,856.20

* Received 12/6/12