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7

8 UNITED STATES DISTRICT COURT

9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 BAY AREA PAINTERS AND TAPERS
 PENSION TRUST FUND, et al.,

11 Plaintiffs,

12 v.

13 NORTHERN PACIFIC DRYWALL, INC., a
 14 California Corporation, and DARRIN MICHAEL
 SPANN, an individual,

15 Defendants.

Case No.: C11-01962 JSW

**NOTICE AND
 ACKNOWLEDGMENT; and
 JUDGMENT PURSUANT TO
 STIPULATION**

17

18 IT IS HEREBY STIPULATED by and between the parties hereto, that Judgment shall be
 19 entered in the within action in favor of the Plaintiffs BAY AREA PAINTERS AND TAPERS
 20 PENSION TRUST FUND, et al. (collectively “Plaintiffs” or “Trust Funds”) and against
 21 Defendants NORTHERN PACIFIC DRYWALL, INC, a California Corporation, and and
 22 DARRIN MICHAEL SPANN, an individual, and/or alter egos and/or successor entities
 23 (collectively “Northern Pacific” or “Defendants”), as follows:

24 1. Defendants entered into a valid Collective Bargaining Agreement with the
 25 District Council 16 of the International Union of Painters and Allied Trades (hereinafter
 26 “Bargaining Agreement”). This Bargaining Agreement has continued in full force and effect to
 27 the present time.

28 2. DARRIN MICHAEL SPANN, RMO/CEO/President of NORTHERN PACIFIC

1 DRYWALL, INC., acknowledges receipt of the following documents in this action on behalf of
2 Defendants NORTHERN PACIFIC DRYWALL, INC., a California Corporation, and DARRIN
3 MICHAEL SPANN, an individual: Summons; Complaint; ADR Dispute Resolution Procedures in
4 the Northern District of California; Instructions for Completion of ADR Forms Regarding
5 Selection of and ADR Process; Stipulation and [Proposed] Order Selecting ADR Process (Blank
6 Form); Notice of Need for ADR Phone Conference (Blank Form); ADR Certification By Parties
7 and Counsel (Blank Form); Notice of Assignment of Case to a United States Magistrate Judge for
8 Trial; Consent to Proceed Before A United States Magistrate Judge (Blank Form); Declination to
9 Proceed Before a Magistrate Judge and Request For Reassignment to A United States District
10 Judge (Blank Form); Order Setting Initial Case Management Conference and ADR Deadlines;
11 Standing Order For Magistrate Judge Donna M. Ryu; Standing Order for All Judges of the
12 Northern District of California, Contents of Joint Case Management Statement; Welcome to the
13 Oakland Divisional Office of the United States District Court; U.S. District Court Northern
14 California ECF Registration Information Handout; Certification of Interested Entities or Persons
15 Pursuant to Local Rule 3-16; Declination to Proceed Before a Magistrate Judge and Request For
16 Reassignment to A United States District Judge.

17 3. Defendants have become indebted to the Trust Funds as follows:

<u>Account No.: 2021-06289800</u>			
9/10	Contributions	\$5,055.24	
	20% Liquidated Damages	\$1,011.05	
	5% p/a Interest (through 5/5/11)	\$127.42	
			\$6,193.71
10/10	Contributions	\$7,409.36	
	20% Liquidated Damages	\$1,481.87	
	5% p/a Interest (through 5/5/11)	\$156.31	
			\$9,047.54
11/10	Contributions	\$8,713.80	
	20% Liquidated Damages	\$1,742.76	
	5% p/a Interest (through 5/5/11)	\$146.82	
			\$10,603.38
12/10	Contributions	\$5,673.24	
	20% Liquidated Damages	\$1,134.65	
	5% p/a Interest (through 5/5/11)	\$71.50	
			\$6,879.39
1/11	Contributions	\$2,801.76	
	20% Liquidated Damages	\$560.35	
	5% p/a Interest (through 5/5/11)	\$24.56	

1			\$3,386.67
2	2/11	Contributions	\$4,539.44
3		20% Liquidated Damages	\$907.89
4		5% p/a Interest (through 5/5/11)	\$20.52
5			\$5,467.85
6	3/11	Contributions	\$7,974.24
7		20% Liquidated Damages	\$1,594.85
8		5% p/a Interest (through 5/5/11)	\$5.45
9			\$9,574.54
10	<u>Account No.: 2051-06289800</u>		
11	10/10	Contributions	\$3,364.70
12		20% Liquidated Damages	\$672.94
13		5% p/a Interest (through 5/5/11)	\$70.98
14			\$4,108.62
15	12/10	Contributions	\$295.10
16		20% Liquidated Damages	\$59.02
17		5% p/a Interest (through 5/5/11)	\$3.72
18			\$357.84
19	1/11	Contributions	\$1,158.84
20		20% Liquidated Damages	\$231.77
21		5% p/a Interest (through 5/5/11)	\$10.16
22			\$1,400.77
23	2/11	Contributions	\$971.88
24		20% Liquidated Damages	\$194.38
25		5% p/a Interest (through 5/5/11)	\$4.39
26			\$1170.65
27	3/11	Contributions	\$3,115.00
28		20% Liquidated Damages	\$623.00
		5% p/a Interest (through 5/5/11)	\$2.15
			\$3,740.15
	<i>SUBTOTAL</i>		\$61,931.11
	Attorneys' Fees (3/8/11-4/26/11)		\$1,506.00
	Costs (to 4/25/11)		\$350.00
	<i>GRAND TOTAL</i>		\$63,787.11

4. Defendant shall **conditionally** pay the amount of **\$53,572.58**, representing all of the above amounts, **less liquidated damages in the amount of \$10,214.53**. *This waiver is expressly conditioned upon the Trustees' approval upon timely compliance with all of the terms of this Stipulation*, as follows:

(a) Beginning on or before May 15, 2011, and on or before the 15th day of each month thereafter, for a period of twelve (12) months, through and including April 15, 2012, Defendants shall pay to Plaintiffs the amount of **\$4,586.00** per month;

(b) Payments may be made by joint check to Defendants and Plaintiffs' Trust Funds, and if so, shall be endorsed by Defendants prior to submission to Plaintiffs;

1 (c) Defendants shall have the right to increase the monthly payments at any
2 time, without penalty;

3 (d) Payments shall be applied first to unpaid interest and then to unpaid
4 principal. The unpaid principal balance shall bear interest at the rate of 5% per annum, from April
5 16, 2011, in accordance with Plaintiffs' Trust Agreements;

6 (e) Payments shall be made payable to the "*District Council 16 Northern*
7 *California Health & Welfare Trust Funds*" and delivered to Michele R. Stafford at Saltzman &
8 Johnson Law Corporation, 44 Montgomery Street, Suite 2110, San Francisco, California 94104,
9 or to such other address as may be specified by Plaintiffs, **to be received on or before the 15th**
10 **day of each month.**

11 (f) Prior to Defendants' final payment, Plaintiffs shall notify Defendants in
12 writing of the final amount due, including interest and any additional attorneys' fees and costs, as
13 well as any other amounts due under the terms herein. Any additional amounts due pursuant to
14 the provisions hereunder shall be paid in full with the final stipulated payment on April 15, 2012.

15 (g) At the time Defendants make their last (April 15, 2012) monthly payment
16 toward the conditional balance owed under the Stipulation, Defendants may submit a written
17 request for a waiver of liquidated damages directed to the Board of Trustees, but sent to Saltzman
18 and Johnson Law Corporation with that payment. Defendants will then be advised as to whether
19 or not the waiver has been granted. If the waiver is granted, upon bank clearance of Defendants'
20 last payment of the conditional balance, Plaintiffs will file a Notice of Satisfaction of Judgment
21 with the Court. However, if the waiver is denied, monthly payments will continue until all
22 liquidated damages due have been paid.

23 (h) Failure to comply with any of the above terms shall constitute a default of
24 Defendants' obligations under this Stipulation and the provisions of ¶10 shall apply.

25 5. Beginning with contributions due for hours worked by Defendants' employees
26 during the month of April 2011, which are due no later than May 15, 2011 and delinquent if not
27 received by May 31, 2011, and for every month thereafter, Defendants **shall remain current in**
28 **reporting and payment of any contributions** due to Plaintiffs under the current Collective

1 Bargaining Agreement and under all subsequent Collective Bargaining Agreements, if any, and
2 the Declarations of Trust as amended. **Defendants shall fax a copy of the contribution report**
3 **for each month, together with a copy of that payment check, to Michele R. Stafford at 415-**
4 **882-9287, or to such other fax number as may be specified by Plaintiffs, prior to sending the**
5 **payment to the Trust Fund office.**

6 6. Defendants shall make full disclosure of all jobs on which they are working by
7 providing Plaintiffs with an ongoing and updated list of jobs including, but not limited to, the
8 name and address of job, general contractor information, certified payroll if a public works job,
9 and period of work. **Defendants shall fax said updated list each month together with the**
10 **contribution report (as required by this Stipulation) to Michele R. Stafford at 415-882-9287.**
11 This requirement remains in full force and effect regardless of whether or not Defendants have
12 ongoing work. In this event, Defendants shall submit a statement stating that there are no current
13 jobs. A blank job report form is attached hereto for Defendants' use, as *Exhibit A*. **To the extent**
14 **that Defendants are working on a Public Works job, or any other job for which Certified**
15 **Payroll Reports are required, copies of said Reports will be faxed to Michele R. Stafford,**
16 **concurrently with their submission to the general contractor, owner or other reporting**
17 **agency.**

18 7. Failure by Defendants to remain current in reporting or payment of contributions
19 shall constitute a default of the obligations under this agreement. Any such unpaid or late paid
20 contributions, together with 20% liquidated damages and 5% per annum interest accrued on
21 contributions, shall be added to and become a part of this Judgment and subject to the terms
22 herein. Plaintiffs reserve all rights available under the applicable Bargaining Agreement and
23 Declarations of Trust of the Trust Funds for collection of current and future contributions, and for
24 any additional past contributions not included herein as may be determined by Plaintiffs, pursuant
25 to employee timecards or paystubs, by audit, or other means, and the provisions of this agreement
26 are in addition thereto. Defendants specifically waive the defense of the doctrine *res judicata* as to
27 any such additional amounts determined as due.

28 8. In the event that any check is not timely submitted or submitted by Defendants but

1 fails to clear the bank, or is unable to be negotiated for any reason for which Defendants are
2 responsible, this shall be considered to be a default on the Judgment entered. If Defendants fail to
3 submit its contribution reports, and /or certified payroll reports (if any) and / or job lists, and / or
4 fail to comply with *any* of the terms of the Stipulation herein, this too shall constitute a default.

5 9. If a default occurs, Plaintiffs shall make a written demand, sent to by facsimile
6 (408-988-7949), to cure said default. Default will only be cured by the issuance of a replacement,
7 cashier's check if the default is caused by a failed check, or at the request of Plaintiffs, to be
8 delivered to Saltzman and Johnson Law Corporation within seven (7) days of the date of the
9 notice from Plaintiffs. If Defendants elect to cure said default, and Plaintiffs elect to accept future
10 payments, all such payments shall be made by cashier's check if the default is caused by a failed
11 check.

12 10. In the event the default is not cured, all amounts remaining due hereunder, as well
13 as any additional amounts due pursuant to the terms herein, shall be due and payable on demand
14 by Plaintiffs as follows:

15 (a) The entire amount of **\$63,787.11** plus interest, reduced by principal
16 payments received by Plaintiffs, but increased by any unpaid contributions then due, plus 20%
17 liquidated damages and 5% per annum interest thereon, shall be immediately due, together with
18 any additional attorneys' fees and costs and other amounts due herein;

19 (b) A writ of execution may be obtained against Defendants and all related
20 entities without further notice, in the amount of the unpaid balance, plus any additional amounts
21 under the terms herein, upon declaration of a duly authorized representative of the Plaintiffs
22 setting forth any payment theretofore made by or on behalf of Defendants and the balance due and
23 owing as of the date of default. Defendants specifically decline the authority of a Magistrate
24 Judge for all proceedings, herein;

25 (c) Defendants waive notice of entry of judgment and expressly waive all rights
26 to stay of execution and appeal. The declaration or affidavit of a duly authorized representative of
27 Plaintiffs as to the balance due and owing as of the date of default shall be sufficient to secure the
28 issuance of a writ of execution;

1 (d) Defendants shall pay all additional costs and attorneys' fees incurred by
2 Plaintiffs in connection with collection and allocation of the amounts owed by Defendants to
3 Plaintiffs under this Stipulation, regardless of whether or not there is a default herein.

4 10. Any failure on the part of the Plaintiffs to take any action against Defendants as
5 provided herein in the event of any breach of the provisions of this Stipulation shall not be deemed
6 a waiver of any subsequent breach by the Defendants of any provisions herein.

7 11. In the event of the filing of a bankruptcy petition by Defendants, the parties agree
8 that any payments made by Defendants pursuant to the terms of this judgment, shall be deemed to
9 have been made in the ordinary course of business as provided under 11 U.S.C. Section 547(c)(2)
10 and shall not be claimed by Defendants as a preference under 11 U.S.C. Section 547 or otherwise.
11 Defendants nevertheless represent that no bankruptcy filing is anticipated.

12 12. Should any provision of this Stipulation be declared or determined by any court of
13 competent jurisdiction to be illegal, invalid, or unenforceable, the legality, validity, and
14 enforceability of the remaining parts, terms or provisions shall not be affected thereby and said
15 illegal, unenforceable or invalid part, term, or provision shall be deemed not to be part of this
16 Stipulation.

17 13. This Stipulation is limited to the agreement between the parties with respect to the
18 delinquent contributions and related sums enumerated herein, owed by Defendants to the
19 Plaintiffs. This Stipulation does not in any manner relate to withdrawal liability claims, if any.
20 Defendants acknowledge that the Plaintiffs expressly reserve their right to pursue withdrawal
21 liability claims, if any, against Defendants as provided by the Plaintiffs' Plan Documents, and
22 Trust Agreements incorporated into their Collective Bargaining Agreement, and the law.

23 14. This Stipulation contains all of the terms agreed by the parties and no other
24 agreements have been made. Any changes to this Stipulation shall be effective only if made in
25 writing and signed by all parties hereto.

26 15. This Stipulation may be executed in any number of counterparts and by facsimile,
27 each of which shall be deemed an original and all of which shall constitute the same instrument.

28 16. The parties agree that the Court shall retain jurisdiction of this matter until this

1 Judgment is satisfied.

2 17. All parties represent and warrant that they have had the opportunity to be or have
3 been represented by counsel of their own choosing in connection with entering this Stipulation
4 under the terms and conditions set forth herein, that they have read this Stipulation with care and
5 are fully aware of and represent that they enters into this Stipulation voluntarily and without
6 duress.

7 Dated: May 10, 2011

**NORTHERN PACIFIC DRYWALL, INC., a
California Corporation**

8
9 By: _____ /S/

DARRIN MICHAEL SPANN, its
RMO/CEO/President

10
11 Dated: May 10, 2011

DARRIN MICHAEL SPANN, an Individual

12
13 _____ /S/

DARRIN MICHAEL SPANN

14
15 Dated: May 16, 2011

**SALTZMAN AND JOHNSON LAW
CORPORATION**

16
17 By: _____ /S/

Michele R. Stafford
Attorneys for Plaintiffs
Bay Area Painters & Tapers Trust Funds

18
19
20 IT IS SO ORDERED.

21 IT IS FURTHER ORDERED that the calendar in this matter is vacated, and that the Court shall
22 retain jurisdiction over this matter, for one year from the date of this judgment. The Clerk
shall close the file.

23
24 Dated: May 17 _____, 2011


UNITED STATES DISTRICT COURT JUDGE

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Exhibit A

JOB REPORT FORM

***** Updated report must be faxed to Michele R. Stafford, Esq., at (415) 882-9287 on the 15th day of each month *****

Employer Name: **NORTHERN PACIFIC DRYWALL, INC.**

Report for the month of _____ Submitted by (print name): _____

Project Name:			
Project Address:			
General Contractor:			
General Contractor Address/Tel. #:			
Contract #:		Date of Contract:	
Total Value of Contract:			
Work Start Date:		Work Completion Date:	

Project Name:			
Project Address:			
General Contractor:			
General Contractor Address/Tel. #:			
Contract #:		Date of Contract:	
Total Value of Contract:			
Work Start Date:		Work Completion Date:	

Project Name:			
Project Address:			
General Contractor:			
General Contractor Address/Tel. #:			
Contract #:		Date of Contract:	
Total Value of Contract:			
Work Start Date:		Work Completion Date:	

*** Attach additional sheets as necessary ***

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PROOF OF SERVICE

I, the undersigned, declare:

1. I am a citizen of the United States and am employed in the County of San Francisco, State of California. My business address is 44 Montgomery Street, Suite 2110, San Francisco, California 94104.

2. I am over the age of eighteen and not a party to this action.

3. On **May 16, 2011**, I served the following document(s):

NOTICE AND ACKNOWLEDGMENT; and JUDGMENT PURSUANT TO STIPULATION

on the interested parties in said action by enclosing a true and exact copy of each document in a sealed envelope and placing the envelope for collection and First Class mailing following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

4. The envelopes were addressed and mailed as follows:

Darrin Spann
Northern Pacific Drywall, Inc.
1535 Farmers Lane #302
Santa Rosa, CA 95405

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on **May 16, 2011**, at San Francisco, California.

_____/S/
Elise Thurman
Paralegal