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6 Attorneys for Plaintiffs

7  
 8 UNITED STATES DISTRICT COURT

9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 BAY AREA PAINTERS AND TAPERS  
 PENSION TRUST FUND, and its JOINT  
 11 BOARD OF TRUSTEES; LES PROTEAU and  
 CHARLES DEL MONTE, TRUSTEES;

12 Plaintiffs,

13 v.

14 SPECTRUM PAINTING & DECORATING,  
 15 INC., a California Corporation, *aka*  
 SPECTRUM PAINTING; and DAVID MIN  
 16 HANG CHAN, individually,

17 Defendants.

Case No.: C11-2850 SC

**REQUEST FOR ENTRY OF  
 CONDITIONAL DISMISSAL WITHOUT  
 PREJUDICE;**

**DECLARATION OF MURIEL B. KAPLAN  
 IN SUPPORT THEREOF;**

**[PROPOSED] ORDER THEREON**

18  
 19 For good cause shown below, Plaintiffs herein respectfully request that the Court vacate  
 20 the calendar in this Action, and conditionally dismiss this matter without prejudice in sixty (60)  
 21 days pending the completion of the audit report and payment from Defendants as anticipated.

22 1. As the Court’s records will reflect, this action was filed to compel Defendants to  
 23 provide complete records for examination pursuant to the terms of the Collective Bargaining  
 24 Agreement. Service on Defendants was effectuated on June 22, 2011. A Proof of Service of  
 25 Summons was filed with the Court on June 24, 2011.

26 2. On December 13, 2010, Defendants had scheduled an audit, but failed to provide  
 27 all documents requested. Demands were sent to Defendants on February 16, 2011, and again on  
 28 March 2, 2011, for the missing documents.

-1-  
**REQUEST FOR ENTRY OF CONDITIONAL DISMISSAL WITHOUT PREJUDICE**  
**Case No.: C11-2850 SC**

1 3. Another inspection was scheduled for June 2, 2011 for the Funds' auditor to review  
2 the missing documents. However, when the Fund auditor arrived, Defendants did not provide the  
3 requested documents, and provided the same sporadic documents as originally submitted last year.

4 4. Plaintiffs filed suit on June 10, 2011, and as a result, on June 27, 2011, Defendants  
5 finally submitted all required documentation to complete the audit.

6 5. The auditor is in the process of analyzing the documents to produce an audit report.  
7 I am advised that this process will take approximately one month. After the report is completed,  
8 the auditor will send a draft copy to Defendants for review, giving Defendants the opportunity to  
9 request any clarifications or oppose any findings in the draft report. In the event that any issues  
10 exist, the parties will attempt to resolve them informally.

11 6. In anticipation of receipt of the audit report and payment, if any is due, Plaintiffs  
12 respectfully request that the Court conditionally dismiss this matter without prejudice in sixty (60)  
13 days.

14 7. Should Defendants fail to make payment, or the matter otherwise remains  
15 unresolved, Plaintiffs will ask that the Court reopen this Matter, and Plaintiffs may move for a  
16 Summary Judgment.

17 8. Plaintiffs have not previously filed or dismissed any similar action against  
18 Defendants and Defendants have not moved for summary judgment.

19 I declare under penalty of perjury that I am the attorney for the Plaintiffs in the above  
20 entitled action, and that the foregoing is true of my own knowledge.

21 Executed this 31st day of August, 2011, at San Francisco, California.

22 SALTZMAN & JOHNSON  
23 LAW CORPORATION

24 By: \_\_\_\_\_ /s/  
25 Muriel B. Kaplan  
26 Attorneys for Plaintiffs

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1 IT IS SO ORDERED.

2 This case shall be dismissed without prejudice on October 30, 2011, on the condition that  
3 Defendants submit payment for audit and thereafter clears the bank upon which it is drawn.

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5 Date: \_\_\_\_\_

THE HONORABLE SAMUEL CONTI

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*Denied,  
CASE TO bd  
PUT on COURT'S  
STANDARD Calendar  
Sept 21/11  
Samuel Conti  
US 25*

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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 **August 31, 2011**, I served the following document(s):

**REQUEST FOR ENTRY OF CONDITIONAL DISMISSAL WITHOUT PREJUDICE;  
DECLARATION OF MURIEL B. KAPLAN IN SUPPORT THEREOF;  
[PROPOSED] ORDER THEREON**

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 envelope was addressed and mailed as follows:

**Spectrum Painting & Decorating, Inc.      David Min Hang Chan  
aka Spectrum Painting                      5 Woodcrest Court  
5 Woodcrest Court                              Hillsborough, California 94010  
Hillsborough, California 94010**

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed **August 31, 2011**, at San Francisco, California.

\_\_\_\_\_  
/s/  
Qui Lu  
Paralegal