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6 Attorneys for Plaintiffs

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8 UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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

Case No.: C11-4188 CRB

11 Plaintiffs,

**PLAINTIFFS’ CASE MANAGEMENT  
STATEMENT and;  
REQUEST TO CONTINUE CASE  
MANAGEMENT CONFERENCE;  
[PROPOSED] ORDER THEREON**

12 v.

13 MGM DRYWALL, INC., a California  
14 Corporation, and MIGUEL GUILLEN  
RAMIREZ *aka* MIGUEL RAMIREZ  
15 GUILLEN, an individual,

Date: October 26, 2012  
Time: 8:30 a.m.  
Ctm: 8, 19<sup>th</sup> Floor, San Francisco  
Judge: Honorable Charles R. Breyer

16 Defendants.

17 Plaintiffs herein respectfully submit their Case Management Statement, requesting that the  
18 Case Management Conference, currently on calendar for October 26, 2012, be continued for  
19 approximately 60 days.

20 1. As the Court’s records will reflect, this action was filed on August 24, 2011.  
21 Service on Defendants was effectuated on November 17, 2011, and A Proof of Service of  
22 Summons on was filed with the Court on November 21, 2011. Defendants failed to plead or  
23 otherwise respond to the lawsuit, and the Clerk entered default as to both Defendants on December  
24 16, 2011.

25 2. As the Court may recall, the parties have been in almost constant contact to discuss  
26 resolution of this matter. Plaintiffs offered Defendants a payment plan (at their request) for what  
27 was due, but ultimately Defendants elected not to utilize the plan and to pay all contributions,  
28 interest, and fees and costs owed. Defendant asked that liquidated damages be waived.

1 Plaintiffs offered Defendants a conditional waiver of the liquidated damages that remained  
2 due on the condition that Defendants remain current in payment of contributions through May  
3 2013 hours worked. Unfortunately, Defendants immediately became delinquent again, not meeting  
4 the waiver requirement. Accordingly, liquidated damages assessed through October 2011 hours  
5 worked are due and owing.

6 3. As permitted by the Collective Bargaining and Trust Agreements, Plaintiffs  
7 conducted an audit of Defendants' payroll records for the time period December 1, 2010 through  
8 the date of inspection, which took place on August 7-8, 2012.

9 The Court had continued the previous Case Management Conference to allow time for the  
10 auditors to review the audit and complete their report.

11 The Trust Funds' auditors did the audit and did an initial (draft) write up of the findings,  
12 estimating the amount owed as in excess of \$145,000. After the draft was completed, the report  
13 was sent for review by a supervisor, who completed the review.

14 The draft report was sent to Defendants on October 13, 2012 for their review. Should  
15 Defendants disagree with the findings, the Trust Funds' policies allow Defendants until October  
16 27, 2012, two weeks following the date the report was mailed, to submit a written statement of  
17 contention, together with all documentation necessary to support Defendants' position.

18 If Defendants do not contest the audit, the report will be considered final, and payment  
19 shall be due within ten (10) days of the revised billing.

20 If the audit is contested, and Defendants provide documentation in support of the dispute,  
21 Defendants shall be notified as to whether revisions will be made to the audit. If revisions are not  
22 made, payment will be immediately due. If revisions are made to said audit as a result of the  
23 dispute, payment in full of the revised amount shall be due within ten (10) days of the revised  
24 billing.

25 4. While the draft audit report was being prepared, Defendants continued their  
26 delinquency pattern by failing to report and failing to pay contributions owed, most recently for  
27 the months of July 2012 and August 2012. Plaintiffs do not expect Defendants to report and pay  
28 September, 2012 based on the current/ongoing pattern.

1 5. Based on the foregoing, Plaintiffs respectfully request that the Case Management  
2 Conference, currently scheduled for October 26, 2012, be continued for 60 days to allow time for  
3 the audit to be finalized, and for the parties to discuss payment of all amounts due. If Defendant  
4 does not agree to a payment plan, a Motion for Default Judgment will be filed.

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

7 Executed this 18th day of October 2012, at San Francisco, California.

8 SALTZMAN & JOHNSON  
9 LAW CORPORATION

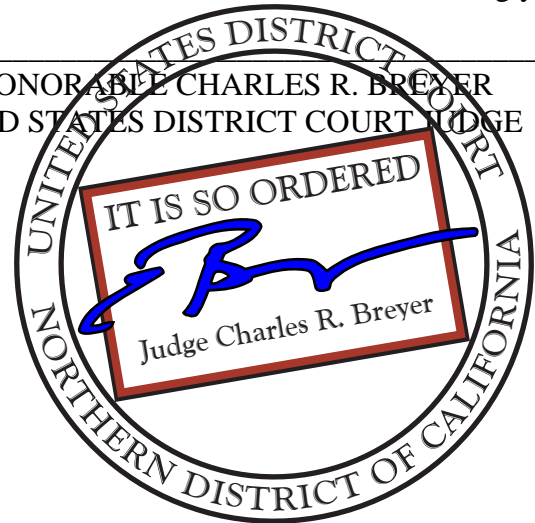
10 By: \_\_\_\_\_/S/  
11 Michele R. Stafford  
Attorneys for Plaintiffs

12 IT IS SO ORDERED.

13 The currently set Case Management Conference is hereby continued to Jan. 11, 2013 at  
14 8:30a., and all previously set deadlines and dates related to this case are continued accordingly.

15 Date: October 19, 2012

16 THE HONORABLE CHARLES R. BREYER  
17 UNITED STATES DISTRICT COURT JUDGE



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