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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  
11 PENSION TRUST FUND, et al.

12 Plaintiffs,

13 v.

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

16 Defendants.

Case No.: C11-4188 CRB

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

Date: March 29, 2013

Time: 8:30 a.m.

Ctrm: 8, 19<sup>th</sup> Floor, San Francisco

Judge: Honorable Charles R. Breyer

17  
18 Plaintiffs herein respectfully submit their Case Management Statement, requesting that the  
19 Case Management Conference, currently on calendar for March 29, 2013, be continued for  
20 approximately 60 days.

21 1. As the Court’s records will reflect, this action was filed on August 24, 2011.  
22 Service on Defendants was effectuated on November 17, 2011, and A Proof of Service of  
23 Summons on was filed with the Court on November 21, 2011. Defendants failed to plead or  
24 otherwise respond to the lawsuit, and the Clerk entered default as to both Defendants on December  
25 16, 2011.

26 2. The parties have been in continuous contact to discuss resolution of this matter.  
27 Plaintiffs offered Defendants a payment plan (at their request) for what was due, but ultimately  
28 Defendants elected not to utilize the plan and to pay all contributions, interest, and fees and costs

1 owed. Defendant asked that liquidated damages be waived.

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

7 4. As permitted by the Collective Bargaining and Trust Agreements, Plaintiffs  
8 conducted an audit of Defendants' payroll records for the time period December 1, 2010 through  
9 the date of inspection, which took place on August 7-8, 2012. The draft report estimating the  
10 amount owed as in excess of \$145,000 was sent to Defendants on October 13, 2012 for their  
11 review.

12 5. Defendants contested the audit and provided documentation in support of their  
13 position. Plaintiffs' auditors reviewed said documentation and made minor adjustments to the  
14 audit. On or about December 20, 2012, Plaintiffs' counsel sent the revised audit to Defendants for  
15 payment and Defendants again contested it, detailing their objections.

16 6. Defendants additionally submitted delinquent contribution reports and payments  
17 for the months of July through October 2012, and then timely submitted their contribution report  
18 and payment for the month of November 2012. Additional liquidated damages and interest are due  
19 for August through October 2012.

20 7. On or about December 28, 2012, Plaintiffs' counsel received a letter from an  
21 attorney who represented that he had recently been retained to represent Defendants, but is hopeful  
22 of resolving this matter without further litigation. The parties decided to attempt resolution first,  
23 and in the event that the matter is not resolved, the parties will execute a stipulation to set aside the  
24 default.

25 8. Since the Court continued the previous Case Management Conference scheduled  
26 for this matter, the audit has been adjusted multiple times following Plaintiffs' auditors' analysis  
27 of multiple batches of documentation submitted by Defendants in support of their dispute as to the  
28 amounts found due. The audit was finalized by Plaintiffs' auditors on or about March 14, 2013.

1 9. Defendants have become delinquent in payment of a contribution balance the  
2 month of December 2012, and have failed to report and pay contributions for the month of January  
3 2013. Liquidated damages and interest are due for December 2012 and January 2013. Defendants  
4 timely submitted their contribution report for the month of February 2013, without payment.  
5 February 2013 contributions will be delinquent if not received by March 29, 2013.

6 10. Plaintiffs' counsel sent the final audit report and a detailed letter to Defendants'  
7 counsel today providing the total amount due to Plaintiffs from Defendants for the audit, current  
8 delinquencies (except for January 2013 contributions, which have not been reported, and related  
9 amounts), and attorneys' fees and costs. Negotiations are now underway to resolve this matter by  
10 way of a lump sum payment or Stipulated Judgment providing for a payment plan. Defendants'  
11 counsel is discussing various payment options with them and has asked that Plaintiffs continue the  
12 Case Management Conference to avoid incurring additional fees and costs while Defendants  
13 evaluate their options.

14 11. Based on the foregoing, Plaintiffs respectfully request that the Case Management  
15 Conference, currently scheduled for March 29, 2013, be continued for 60 days to allow time for  
16 the parties to attempt to resolve this matter. If an agreement is not reached, the parties will execute  
17 a stipulation to set aside the default, and will evaluate formal ADR options.

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

20 Executed this 19th day of March, 2013, at San Francisco, California.

21 SALTZMAN & JOHNSON  
22 LAW CORPORATION

23 By: \_\_\_\_\_/S/  
24 Michele R. Stafford  
25 Attorneys for Plaintiffs

26 IT IS SO ORDERED.

27 The currently set Case Management Conference is hereby continued to June 14, 2013 at  
28 8:30 a.m., and all previously set deadlines and dates related to this case are continued accordingly.

Date: March 22, 2013 \_\_\_\_\_

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THE HONORABLE CHARLES R. BREYER  
UNITED STATES DISTRICT JUDGE

