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UNITED STATES DISTRICT COURT

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FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 F.G. CROSTHWAITE, et al.

Case No.: C11-4417-JSW

11 Plaintiffs,

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

12 v.

13 FREMONT PAVING COMPANY, INC., a  
 California Corporation, et al.,

14 Defendants.

Date: April 6, 2012

Time: 1:30 p.m.

Ctrm: 11, 19<sup>th</sup> Floor

Judge: Honorable Jeffrey S. White

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17 Plaintiffs herein respectfully submit their Case Management Statement, requesting that the  
 18 Case Management Conference, currently on calendar for April 6, 2012, be continued for  
 19 approximately 60 – 90 days.

20 1. As the Court's records will reflect, this action was filed on September 6, 2011, to  
 21 compel Defendants to comply with their Collective Bargaining Agreement.

22 2. As the Court's records will further reflect, service of process on Defendants was  
 23 effectuated as follows: Fremont Paving Company and Ellen Marie Lebon were served on  
 24 September 12, 2011; Donald Allen Lebon was served on September 14, 2011; Joseph James  
 25 Lebon was served on October 7, 2011. Proofs of Service of Summons were filed with the Court  
 26 on October 4, 2011 (Dkt. #9) and October 7, 2011 (Dkt. #11).

27 3. Robert E. Carey, Jr., of Carey & Carey Law Corporation advised Plaintiffs' counsel  
 28 that he was retained to represent the Defendants in this matter, and requested an extension of time

1 to answer or otherwise respond to the Complaint, to November 18, 2011. Plaintiffs' counsel  
2 granted that request, and executed a Stipulation to that effect on October 12, 2011. Since then,  
3 Plaintiffs' counsel granted Defendants an additional extension of time to answer or otherwise  
4 respond to the Complaint. Defendant's counsel recently prepared and advised that he intended to  
5 file a Motion to Dismiss relative to some of the individual defendants. The parties are attempting  
6 to work out a resolution to the issues posed in the Motion to dismiss, which may include dismissal  
7 of one or more of the individual defendants. Information as to respective liability is being  
8 exchanged.

9 4. Defendants were unaware of the extent of their debt to the Trust Funds as the  
10 individual responsible for payment of Trust Fund contributions had been systematically converting  
11 the contributions for her own use. Due to this unusual fact pattern, discovery is being done  
12 informally and cooperatively.

13 5. The Secret Service has been investigating this matter, and is preparing to present an  
14 indictment request to the Grand Jury. Plaintiffs counsel has worked with this particular agent, to  
15 assist her in compiling the information required to prosecute the responsible individual. Although  
16 recovery of funds is unlikely, prosecution will likely commence shortly.

17 6. In addition, Defendants have filed a lawsuit against the various financial  
18 institutions that cashed the checks presented by the embezzler, on the theory that the checks  
19 should have never been honored as written. Defendants are hopeful that a resolution may be  
20 reached which will allow funds to be paid to Plaintiffs herein.

21 7. Defendants have met with both the EDD and the IRS relative to the debt owed to  
22 these entities. The individual who embezzled from Fremont Paving (the granddaughter of the  
23 owners no less) also failed to pay any required payroll or other taxes. The defendants have worked  
24 diligently with the EDD and IRS and have worked out some, but not all of the issues. Defendants  
25 do not want to enter into a payment plan with Plaintiffs herein without knowing what their  
26 payment plan will be with the other entities as they do not know what their cash flow will allow.  
27 There is an additional \$400,000+ owed to other entities, and more than that amount owed to  
28 Plaintiffs herein.

1 8. There are no issues that need to be addressed at the currently scheduled Case  
2 Management Conference. In the interest of conserving costs as well as the Court's time and  
3 resources, Plaintiffs respectfully request that the Case Management Conference, currently  
4 scheduled be continued for 60-90 days. Pursuant to the Defendants' counsel's representation, the  
5 IRS will have an agreement for Defendants within that time frame. The parties have been  
6 discussing other options (such as stipulating to a lump sum judgment) which may resolve the  
7 matter earlier.

8 Dated: March 29, 2012

SALTZMAN & JOHNSON  
LAW CORPORATION

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By: \_\_\_\_\_/S/

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Michele R. Stafford  
Attorneys for Plaintiffs

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IT IS SO ORDERED.

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Based on the foregoing, and GOOD CAUSE APPEARING, the currently set Case  
Management Conference is hereby continued to June 29, 2012 at 1:30 p.m.. All related  
15 deadlines are extended accordingly.

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Date: April 5, 2012

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THE HONORABLE JEFFREY S. WHITE  
UNITED STATES DISTRICT COURT JUDGE

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