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7
8 UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 F.G. CROSTHWAITE and RUSSELL E.
11 BURNS, in their respective capacities as
Trustees of the OPERATING
12 ENGINEERS' HEALTH AND WELFARE
TRUST FUND, et al.,

13 Plaintiffs,

14 v.

15 MURRAY STEVEN WEBER, Individually
and *dba* MURRAY WEBER TRUCK &
16 TRACTOR SERVICE, *aka* WEBER
TRACTOR SERVICE, *aka* MURRAY
17 WEBER TRUCKING & TRACTOR, *aka*
MURRAY WEBER TRACTOR SERVICE,

18 Defendant.
19

Case No.: C12-0367 WHA

**FIRST AMENDED JUDGMENT
PURSUANT TO STIPULATION**

20 IT IS HEREBY STIPULATED by and between the parties hereto, that this First Amended
21 Judgment Pursuant to Stipulation ("First Amended Stipulation") shall be entered in the within
22 action in favor of the Plaintiffs OPERATING ENGINEERS HEALTH AND WELFARE TRUST
23 FUND, et al. (collectively "Plaintiffs" or "Trust Funds") and against Defendant MURRAY
24 STEVEN WEBER, Individually and *dba* MURRAY WEBER TRUCK & TRACTOR SERVICE,
25 *aka* WEBER TRACTOR SERVICE, *aka* MURRAY WEBER TRUCKING & TRACTOR, *aka*
26 MURRAY WEBER TRACTOR SERVICE, a California Corporation, and/or alter egos and/or
27 successor entities, ("Defendant" or "Weber"), as follows.

28 2. All provisions of the Judgment Pursuant to Stipulation ("Stipulation"), entered by

FIRST AMENDED JUDGMENT PURSUANT TO STIPULATION

CASE NO.: C12-0367 WHA

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1 the Court on May 31, 2012, shall remain in full force and effect and incorporated herein, except
 2 paragraphs 2, 3, 4, and 10, which are amended and agreed as follows. References to Defendant
 3 herein shall continue to include Guarantor, but all references to "Blake E. Williams" in the
 4 Stipulation shall refer herein instead to "Muriel B. Kaplan."

5 In addition, paragraph 9 of the Stipulation is revised only insofar as to add notice to be
 6 given to MurrayWeberConst@aol.com as well as nstieren@comcast.com, in the event of default
 7 of any of the terms of the Stipulation and/or First Amended Stipulation.

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 9 **Revised ¶2:**

10 2. The parties agree that Defendant remains and has become further indebted to the
 11 Trust Funds as follows, although some payments have been represented as recently paid, as noted
 12 below the "Total":

	Principal	Liquidated Damages	Interest	Totals
13 Stipulation balance (as of 8/20/12)	\$29,822.08			
14 Conditionally waived Liquidated Damages in Stipulation		\$8,341.05		
15 10% p/a Interest on Stipulation Conditional Balance (8/21/12-1/28/13)			\$1,315.44	
16 6/12 Contributions	\$2,486.00			\$39,478.57
17 20% Liquidated Damages		\$497.20		
10% p/a Interest (7/26/12-1/28/13)			\$127.36	
18 7/12 Contributions	\$2,144.88			\$3,110.56
19 20% Liquidated Damages		\$428.98		
10% p/a Interest (8/26/12-1/28/13)			\$91.67	
20 8/12 Contributions	\$3,892.56			\$2,665.53
21 20% Liquidated Damages		\$778.51		
10% p/a Interest (9/26/12-1/28/13)			\$133.31	
22 9/12 Contributions	\$635.52			\$4,804.38
23 20% Liquidated Damages		\$127.10		
10% p/a Interest (10/26/12-1/28/13)			\$17.59	
24 SUB-TOTALS	\$38,981.04	\$10,172.84	\$1,685.37	\$780.21
				\$50,839.25
25 Attorneys' fees (5/2/12-1/25/13)			\$5,837.00	
26 Costs (4/5/12-1/30/12)			\$1,163.99	
				\$7,000.99
TOTAL - First Amended Stipulation				\$57,840.24
27 Credit (Levy proceeds: Foster City - Received 2/14/13)			<\$5,605.21>	
28 Credit (Anticipated Levy proceeds: Bank of the West)			<\$4,618.37>	
Credit (Defendant's anticipated agreed payment)			<\$4,849.91>	

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FIRST AMENDED JUDGMENT PURSUANT TO STIPULATION
CASE NO.: C12-0367 WHA

1	Credit (Anticipated stipulated payment #1 for February 2013)	<\$1,000.00>
2	Balance due after receipt of above anticipated credits:	<\$16,073.49> \$41,766.75

4 **Revised ¶¶ 3(a), 3 (d), 3(e), 3(g), 3(h):**

5 3. Personal Guarantor Murray Weber expressly agrees that the credited amounts
6 above are a part of and remain due under this First Amended Stipulation until received and bank
7 clearance is confirmed. Except for the above credited amounts yet to be (or already) received,
8 Plaintiffs shall release the levies currently placed on City of Foster City, City of Daly City, and
9 City of Santa Clara, upon receipt of this First Amended Stipulation executed by Defendant.

10 Defendant has submitted copies of check numbers 008778 (\$4,849.91) and 008777
11 (\$1,000.00), credited above, reported by Defendant to have been mailed to Plaintiffs on February
12 15, 2013, but not yet received. Following receipt of those payments, Defendant shall
13 *conditionally* pay the remaining amount of **\$31,593.91**, representing all amounts due following
14 those credits in ¶2 above, less conditionally waived liquidated damages in the amount of
15 **\$10,172.84**. *This conditional waiver is expressly conditioned upon timely compliance with all of*
16 *the terms of this First Amended Stipulation, as follows:*

17 (a) Beginning on or before February 20, 2013, and continuing on or before the
18 20th day of each month thereafter, Defendant shall pay to Plaintiffs the minimum amount of
19 **\$1,000.00** per month for a period of twenty four (24) months, through and including January 20,
20 2015, when all amounts remaining due shall be paid in full. Checks shall be made payable to the
21 Operating Engineers Local 3 Trust Funds, and delivered on or before each due date to Muriel B.
22 Kaplan at Saltzman & Johnson Law Corporation, 44 Montgomery Street, Suite 2110, San
23 Francisco, California 94104, or to such other address as may be specified by Plaintiffs, to be
24 received on or before the 20th day of each month.

25 (d) Payments shall be applied first to unpaid principal, with interest on the
26 principal balance to accrue at the rate of 10% per annum beginning from January 29, 2013, in
27 accordance with the Collective Bargaining Agreement and Plaintiffs' Trust Agreements. The
28 accrued interest shall be paid with all balances remaining due for the 24th stipulated payment.

1 (e) Checks shall be made payable to the *Operating Engineers Local 3 Trust*
2 *Funds*, and delivered on or before each due date to Muriel B. Kaplan at Saltzman & Johnson Law
3 Corporation, 44 Montgomery Street, Suite 2110, San Francisco, California 94104, or to such other
4 address as may be specified by Plaintiffs, to be received on or before the 20th day of each month.

5 (g) If Defendant has defaulted but cured any default hereunder, Defendant
6 may, prior to its 24th payment, submit a written request for waiver of liquidated damages directed
7 to the Board of Trustees, but sent to Saltzman and Johnson Law Corporation. Defendant will be
8 advised as to whether or not the waiver has been granted prior to the final payment hereunder.
9 Such waiver will not be considered until and unless all other amounts are paid through the 23rd
10 payment, and Defendant's account is otherwise current.

11 If the waiver is granted, upon bank clearance of Defendant's final payment of the
12 conditional balance with any additional accrued amounts due, and with confirmation that
13 Defendant's account is otherwise current, Plaintiffs will file a Notice of Satisfaction of Judgment
14 with the Court. If the waiver is denied, monthly payments will continue until all liquidated
15 damages not waived have been paid.

16 (h) Prior to the last payment pursuant to this Stipulation, Plaintiffs shall advise
17 Defendant, in writing, as to the final conditional amount due, including interest and all additional
18 attorneys' fees and costs incurred by Plaintiffs in connection with collection and allocation of the
19 amounts owed to Plaintiffs under this Stipulation. All additional amounts due pursuant to the
20 provisions hereunder shall be paid in full with the final stipulated payment.

21 **Revised ¶4:**

22 4. Beginning with reports and contributions due for hours worked (if any) by
23 Defendant's employees during the month of January 2013, which are due by February 15, 2013
24 and will be delinquent if not received by the Trust Funds on or before February 25, 2013, and for
25 every month thereafter, Defendant shall remain current in reporting and payment of all
26 contributions due to Plaintiffs under the current Collective Bargaining Agreements and under all
27 subsequent Collective Bargaining Agreements, if any, and the Declarations of Trust as amended.
28 Defendant shall submit its contribution report for each month, together its payment check, to the

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FIRST AMENDED JUDGMENT PURSUANT TO STIPULATION
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1 Trust Fund's designated P.O. Box. Defendant shall concurrently send a copy of that report and
2 payment by email to both mkaplan@sjlawcorp.com and vanessa@sjlawcorp.com, or by facsimile
3 to Muriel B. Kaplan at 415-882-9287, or to such other email or fax number as may be specified by
4 Plaintiffs. Failure by Defendant to timely submit to Muriel B. Kaplan a copy of its current
5 contribution report and payment, or report of "no employees," if applicable, shall constitute a
6 default of the obligations under this agreement and the provisions of ¶10 shall apply.

7 **Revised ¶10(a):**

8 In the event that Defendant fails to make any payment required under revised ¶3 above, or
9 fails to remain current in any contributions under ¶4 above or fails to timely provide the monthly
10 documents required by ¶¶4 and 5 herein, and such default is not timely cured, the following will
11 occur:

12 (a) The entire unpaid balance of the \$52,235.03 total due, as specified in ¶2,
13 less principal payments received, but adding all accrued interest, any unpaid contributions then
14 due, plus 20% liquidated damages and 10% per annum interest on the unpaid or late paid
15 contributions, shall be made a part of this Judgment and be immediately due and payable, together
16 with any additional attorneys' fees and costs incurred during the term of this First Amended
17 Stipulation.

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1 2. All other terms and provisions of the Judgment Pursuant to Stipulation shall
2 continue to remain in full force and effect, and are incorporated into this First Amended
3 Stipulation.

4 Dated: February 28, 2013

MURRAY STEVEN WEBER

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6 By: 

Murray Steven Weber, Sole Owner of Murray
Weber Truck & Tractor Service aka Weber
Tractor Service, aka Murray Weber Trucking &
Tractors, aka Murray Weber Tractor Service

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9 Dated: ~~February~~ March 4, 2013

OPERATING ENGINEERS TRUST FUNDS

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11 By: 

David Hayner
Collections Manager, Operating Engineers'
Health & Welfare Trust Fund, et al.

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13 Dated: March 4, 2013

**SALTZMAN & JOHNSON
LAW CORPORATION**

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16 By: 

Muriel B. Kaplan
Attorneys for Plaintiffs

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18 IT IS SO ORDERED.

19 The First Amended Judgment Pursuant to Stipulation is hereby entered.

20 IT IS FURTHER ORDERED that the Court shall retain jurisdiction over this matter for two years
21 from the date of the May 31, 2012 entry of the Judgment Pursuant to Stipulation.

22 Dated: March 18, 2013

23 
UNITED STATES DISTRICT COURT JUDGE

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FIRST AMENDED JUDGMENT PURSUANT TO STIPULATION
CASE NO.: CL2-0367 WHA

PLAINTIFFS: OESCLMurray Weber Truck and Tractor/PladingsJudgment Pursuant to Stipulation,First Amended Stipulation - DRAFT/CL2-0367 WHA First Amended Stipulation