1	Mishele D. Staffand Ess. (SDN 172500)		
2	Michele R. Stafford, Esq. (SBN 172509) Muriel B. Kaplan, Esq. (SBN 124607) SALTZMAN & JOHNSON LAW CORPORATION		
2	44 Montgomery Street, Suite 2110 San Francisco, CA 94104		
4	Telephone: (415) 882-7900 Facsimile: (415) 882-9287		
5	mstafford@sjlawcorp.com mkaplan@sjlawcorp.com		
6	Attorneys for Plaintiffs		
7			
8	UNITED STATES DISTRICT COURT		
9	FOR THE NORTHERN DISTRICT OF CALIFORNIA		
10	BAY AREA PAINTERS AND TAPERS	Case No.: C12-6162 MMC	
11	PENSION TRUST FUND, et al.	REQUEST TO CONTINUE CASE	
12	Plaintiffs, v.	MANAGEMENT CONFERENCE; PLAINTIFFS' CASE MANAGEMENT	
13	RHODES PAINTING & DECORATING,	CONFERENCE STATEMENT; PROPOSED ORDER THEREON	
14	INC. <i>aka</i> RHODES PAINTING, a California Corporation; and LANETT	ORDER VACATING CASE MANAGEMENT CONFERENCE; SETTING DEADLINE FOR	
15	FERGUSON, an Individual,	PLAINTIFFS TO FILE MOTION FOR	
16	Defendants.	DEFAULT JUDGMENT Date: September 13, 2013	
17		Time: 10:30 a.m. Dept.: 7, 19 th Floor, San Francisco, CA	
18		Judge: The Honorable Maxine M. Chesney	
19			
20	Plaintiffs herein respectfully submit their Case Management Statement, requesting that the		
21	Case Management Conference, currently on calendar for September 13, 2013 be continued for 60-		
22	90 days. Good cause exists for the continuance, as follows:		
23	1. As the Court's records will reflect, this action was filed on December 5, 2012.		
24	Service on Defendants was effectuated on December 19, 2012, and A Proof of Service of		
25	Summons on was filed with the Court on January 2, 2013 [Dkt. #10]. Defendants failed to plead or		
26	otherwise respond to the lawsuit, and the Clerk entered default as to both Defendants on January		
27	17, 2013 [Dkt. #12].		
28	2. As permitted by the Collec	tive Bargaining and Trust Agreements, Plaintiffs	
	-1- REQUEST TO CONTINUE CASE MANAGEMENT CONFERENCE Case No.: C12-6162 MMC C:\Documents and Settings\USDC\Local Settings\Temp\notes56FD74\C12-6162 MMC CMC Continuance Request 090313.doc		
		Dockets.Justia.dom	

conducted an audit of Defendants' payroll records for the time period October 1, 2009 through
 December 31, 2012. The auditors completed a draft report on or about May 29, 2013, which was
 sent to Defendants for review. As Defendants did not contest the audit, the draft report was
 considered final, and the audit was billed on June 20, 2013. Defendants' payment was due within
 ten days, by June 30, 2013.

3. Because Defendants failed to submit payment for the audit, on or about July 3,
2013, Plaintiffs sent a letter to Defendants enclosing a copy of the audit bill, and requesting that
Defendants either submit payment in full or contact Plaintiffs' counsel to arrange a payment
schedule. Having heard nothing from Defendants in response, Plaintiffs' counsel emailed
Defendants on June 9th and 11th to follow up, advising that a Motion for Default Judgment would
be prepared absent receipt of their response by July 16, 2013.

4. Defendants forwarded the July 11, 2013 email to bankruptcy attorneys The Law 12 13 Offices of Stan E. Riddle. Nichole Zorrilla of said law office emailed Plaintiffs' counsel advising that their client, Bennie Rhodes, Jr., filed for Chapter 13 bankruptcy on July 9, 2013, and provided 14 a copy of the Notice of Bankruptcy Filing. Plaintiffs' counsel requested clarification from Ms. 15 16 Zorrilla as to whether the corporation Rhodes Painting & Decorating, Inc. filed for bankruptcy, or 17 solely Bennie Rhodes, Jr. In response, attorney Vince Wood called Plaintiffs' counsel and advised 18 that The Law Offices of Stan E. Riddle represent both Bennie Rhodes, Jr. and Lanett Ferguson, 19 who has power of attorney over Mr. Rhodes, Jr. Mr. Wood further advised that he didn't think a 20 corporate bankruptcy was appropriate in this case, as the filing fee is substantially higher than that 21 of an individual bankruptcy, and his client is a small business with a plan to pay its creditors in 22 full.

5. Plaintiffs' counsel analyzed the bankruptcy filings and discovered that "DBA
Rhodes Painting & Decorating, Inc." is included in the Voluntary Petition under other names used
by the Debtor (Bennie Rhodes, Jr.) in the last 8 years, and the amounts due to Plaintiffs for the
audit are included on "Schedule F – Creditors Holding Unsecured Nonpriority Claims".
Nevertheless, it is Plaintiffs' determination that the amounts due from Defendants are not subject
to the bankruptcy matter filed by Bennie Rhodes, Jr., an individual.

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1	6. Defendants may have become further delinquent to Plaintiffs, as they failed to	
2	submit their contribution reports (and any payments due) for hours worked by their employees	
3	during the month of July 2013.	
4	7. Accordingly, Plaintiffs intend to promptly prepare and file a Motion for Summary	
5	Judgment for all amounts known to be due to Plaintiffs with the Court.	
6	8. Based on the foregoing, Plaintiffs respectfully request that the Case Management	
7	Conference, currently scheduled for September 13, 2013, be continued for 60-90 days to allow	
8	time for a Motion for Default Judgment to be prepared, filed, and considered by the Court.	
9	I declare under penalty of perjury that I am the attorney for the Plaintiffs in the above	
10	entitled action, and that the foregoing is true of my own knowledge.	
11	Executed this 3rd day of September, 2013, at San Francisco, California.	
12	SALTZMAN & JOHNSON	
13	LAW CORPORATION	
14	By: /S/ Michele R. Stafford	
15	Attorneys for Plaintiffs IT IS SO ORDERED.	
16	Based on the foregoing, and GOOD CAUSE APPEARING, the currently set Case Management	
17	Conference is hereby continued to All related deadlines are extended accordingly.	
18	VACATED.	
19		
20	for default judgment or a statement indicating why they should not be required to do so.	
21		
22		
23	Date: <u>September 4, 2013</u>	
24	THE HONORABLE MAXINE M. CHINNY	
25		
26		
27		
28		
	-3- REQUEST TO CONTINUE CASE MANAGEMENT CONFERENCE	
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