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 8 UNITED STATES DISTRICT COURT  
 9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 10

11 RUSSELL E. BURNS, et al.,  
 12 Plaintiffs,  
 v.  
 13 C. APARICIO CEMENT CONTRACTOR,  
 14 INC., a California Corporation; ANDREW  
 JOHN APARICIO, an Individual,  
 15 Defendants.

Case No.: C14-2755 RS  
 ORDER  
**NOTICE OF ACKNOWLEDGMENT  
 AND JUDGMENT PURSUANT TO  
 STIPULATION**

17 IT IS HEREBY STIPULATED and AGREED (the “Stipulation”) by and between the  
 18 parties hereto, that Judgment shall be entered in the within action in favor of Plaintiffs RUSSELL  
 19 E. BURNS, et al. (“Plaintiffs” or “Trust Funds”) and against Defendants C. APARICIO CEMENT  
 20 CONTRACTOR, INC., a California corporation, ANDREW JOHN APARICIO, an Individual  
 21 (collectively referred to hereinafter as “Defendants”), and/or alter egos and/or successor entities,  
 22 as follows:

23 1. Defendants entered into the Independent Northern California Construction  
 24 Agreement (“Independent Agreement”) with the Operating Engineers Local Union No. 3 of the  
 25 International Union of Operating Engineers, AFL-CIO (“Union”), which incorporates the Master  
 26 Agreement between the Union and the Associated General Contractors of California (“Master  
 27 Agreement”). The Independent Agreement and Master Agreement are collectively referred to  
 28 hereinafter as the “Bargaining Agreement.” The Bargaining Agreement is still in full force and

1 effect.

2           2.       Defendant C. Aparicio Cement Contractor, Inc., through its president Andrew John  
3 Aparicio, and Individual Defendant Andrew John Aparicio, acknowledge receipt of the following  
4 documents in this action: Summons; Complaint; Certificate of Interested Entities or Persons  
5 Pursuant to Civil Local Rule 3-16; Dispute Resolution Procedures in the Northern District of  
6 California; Instructions for Completion of ADR Forms Regarding Selection of an ADR Process;  
7 Stipulation and [Proposed Order] Selecting ADR Process; Notice of Need for ADR Phone  
8 Conference; ADR Certification by Parties and Counsel; Order Setting Initial Case Management  
9 Conference and ADR Deadlines; Standing Order for All Judges of the Northern District of  
10 California; Judge Seeborg's Standing Order re Initial Case Management; ECF Registration  
11 Information Handout; and Filing Procedures (San Francisco).

12           3.       Andrew John Aparicio, in his capacity as RMO/CEO/President of Defendant C.  
13 Aparicio Cement Contractor, Inc., hereby confirms that he is authorized to enter into this  
14 Stipulation on behalf of all Defendants and further confirms that all successors in interest,  
15 assignees, and affiliated entities (including, but not limited to parent or other controlling  
16 companies), and any companies with which Defendants join or merge, if any, shall also be bound  
17 by the terms of this Stipulation as Guarantors. This shall include any additional entities in which  
18 Andrew John Aparicio is an officer, owner or possesses any ownership interest. Defendants and  
19 all such entities shall specifically consent to the Court's jurisdiction in writing at the time of any  
20 assignment, affiliation or purchase, as well as to all other terms herein.

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4. Defendants have become indebted to the Trust Funds as follows:

Work Month	Unpaid Contributions	20% Liquid. Damages on Reported Contributions	10% Interest (through 5/30/14)	Total
February 2014	\$6,825.14	\$1,325.92	\$126.34	<b>\$8,277.40</b>
March 2014	\$8,495.76	\$1,466.98	\$78.36	<b>\$10,041.10</b>
April 2014	\$7,855.87	\$1,356.54	\$12.99	<b>\$9,225.40</b>
<b>Subtotals:</b>	<b>\$23,176.77</b>	<b>\$4,149.44</b>	<b>\$217.69</b>	
<b>Delinquent Contributions, Interest &amp; Liquidated Damages Thereon</b> (2/14-4/14, breakdown above)				<b>\$27,543.90</b>
<b>10% Liquidated Damages on Prior Late-Paid Contributions</b> (10/13-1/14)				<b>\$2,246.35</b>
<b>10% Interest on Prior Late-Paid Contributions</b> (12/13-1/14)				<b>\$271.07</b>
<b>Attorneys' Fees (through 6/16/14)</b>				<b>\$612.00</b>
<b>Costs (through 6/16/14)</b>				<b>\$400.00</b>
<b>Total Due:</b>				<b>\$31,073.32</b>

5. Defendants shall *conditionally* pay the amount of **\$24,677.53**, representing all of the above amounts, less conditionally-waived liquidated damages in the amount of **\$6,395.79**. *This conditional waiver is expressly conditioned upon Trustee approval following timely compliance with all of the terms of this Stipulation*, as follows:

(a) Beginning on **June 25, 2014**, and on or before the 25th day of each month thereafter for a period of twelve (12) months, through and including May 25, 2015, Defendants shall pay to Plaintiffs the amount of **\$2,170.00** per month;

(b) Payments may be made by joint check, to be endorsed by Defendants prior to submission. Payments made by joint check may be applied toward Defendants' monthly stipulated payment provided that the issuer of the joint check is not requesting a release in exchange for the payment. Joint check payments in which a release is requested may not be applied toward Defendants' monthly stipulated payment, but shall be deducted from the total balanced owed under this Stipulation provided the payment is for contributions included in this Stipulation;

1 (c) Defendants shall have the right to increase the monthly payments at any  
2 time and there is no penalty for prepayment;

3 (d) Payments shall be applied first to unpaid interest and then to unpaid  
4 principal. The unpaid principal balance shall bear interest from May 31, 2014, at the rate of 10%  
5 per annum in accordance with the Bargaining Agreement and Plaintiffs' Trust Agreements;

6 (e) Checks shall be made payable to the *Operating Engineers Trust Funds*,  
7 and delivered on or before each due date to Michele R. Stafford, Esq. at Saltzman & Johnson Law  
8 Corporation, 44 Montgomery Street, Suite 2110, San Francisco, California 94104, or to such other  
9 address as may be specified by Plaintiffs;

10 (f) At the time that Defendants make their eleventh (11<sup>th</sup>) stipulated payment,  
11 Defendants may submit a written request for waiver of liquidated damages directed to the Board  
12 of Trustees, but sent to Saltzman and Johnson Law Corporation with their eleventh (11<sup>th</sup>) payment.  
13 Such waiver will not be considered until and unless all other amounts are paid in full and  
14 Defendants' account is otherwise current;

15 (g) Prior to the last payment pursuant to this Stipulation, Plaintiffs shall advise  
16 Defendants in writing, by email to [lgreer@aparicioconcrete.com](mailto:lgreer@aparicioconcrete.com), as to the final amount due,  
17 including additional interest and all additional attorneys' fees and costs incurred by Plaintiffs in  
18 connection with the collection and allocation of the amounts owed to Plaintiffs under this  
19 Stipulation. Defendants shall pay all additional interest, attorneys' fees and costs regardless of  
20 whether or not Defendants default herein. Any additional amounts due pursuant to the provisions  
21 hereunder shall also be paid in full with the final stipulated payment due on May 25, 2015; and

22 (h) Failure to comply with any of the above terms shall constitute a default of  
23 the obligations under this Stipulation and the provisions of ¶ 11 shall apply.

24 6. In the event that any check is not timely submitted or fails to clear the bank, or is  
25 unable to be negotiated for any reason for which Defendants are responsible, Defendants shall be  
26 considered to be in default of the Judgment entered. If this occurs, Plaintiffs shall make a written  
27 demand to Defendants, by regular mail and email to [lgreer@aparicioconcrete.com](mailto:lgreer@aparicioconcrete.com), to cure said  
28 default *within seven (7) days of the date of the notice from Plaintiffs*. If caused by a failed

1 check, default will only be cured by the issuance of a replacement *cashier's check*, delivered to  
2 Saltzman and Johnson Law Corporation within the seven (7) day cure period. If Defendants elect  
3 to cure said default, and Plaintiffs elect to accept future payments, *all such future payments shall*  
4 *be made by cashier's check* at Plaintiffs' request. In the event default is not cured, all amounts  
5 remaining due hereunder shall be due and payable on demand by Plaintiffs.

6 7. Beginning with contributions due for hours worked by Defendants' employees  
7 during the month of **May 2014**, due on June 15, 2014 and delinquent if not received by the Trust  
8 Funds on June 25, 2014, and for every month thereafter until this Judgment is satisfied,  
9 **Defendants shall remain current in contributions** due to Plaintiffs under the current Collective  
10 Bargaining Agreement and under all subsequent Collective Bargaining Agreements, if any, and  
11 the Declarations of Trust as amended.

12 Defendants shall fax or email a copy of their contribution report for each month, together  
13 with a copy of that payment check, to *Michele R. Stafford and Alicia Rutkowski at 415-882-9287*  
14 or to [mstafford@sjlawcorp.com](mailto:mstafford@sjlawcorp.com) and [arutkowski@sjlawcorp.com](mailto:arutkowski@sjlawcorp.com), prior to sending the payment to  
15 the Trust Fund office.

16 Failure to comply with these terms shall constitute a default of the obligations under this  
17 Agreement and the provisions of ¶ 11 shall apply.

18 8. Defendants shall make full disclosure of all jobs on which they are working by  
19 providing Plaintiffs with an ongoing and updated list of jobs including, but not limited to, the  
20 name and address of the job, the start and completion dates, the identity of General  
21 Contractor/Owner/Developer, and by providing certified payroll if it is a public works job.  
22 **Defendants shall submit said updated list on or before the last day of the month either by**  
23 **email to both [mstafford@sjlawcorp.com](mailto:mstafford@sjlawcorp.com) and [arutkowski@sjlawcorp.com](mailto:arutkowski@sjlawcorp.com), or by facsimile to**  
24 **Michele R. Stafford and Alicia Rutkowski at 415-882-9287.** This requirement remains in full  
25 force and effect regardless of whether or not Defendants have ongoing work. In this event,  
26 Defendants shall submit a statement stating that there are no current jobs. A blank job report form  
27 is attached hereto for Defendants' use, as *Exhibit A*. **To the extent that Defendants are working**  
28 **on a Public Works job, or any other job for which Certified Payroll Reports are required,**

1 copies of said reports *will be faxed or emailed to Michele R. Stafford and Alicia Rutkowski at*  
2 *415-882-9287 or [mstafford@sjlawcorp.com](mailto:mstafford@sjlawcorp.com) and [arutkowski@sjlawcorp.com](mailto:arutkowski@sjlawcorp.com) concurrently with*  
3 *their submission to the general contractor, owner, or other reporting agency at Plaintiffs'*  
4 *request.*

5 Failure by Defendants to timely submit updated job lists shall constitute a default of the  
6 obligations under this agreement, which Defendants shall be permitted to cure within seven (7)  
7 days' written notice from Plaintiffs to Defendants.

8 9. **Audit:** Should the Trust Funds request an audit of Defendants' payroll records in  
9 order to confirm proper reporting and payment of contributions pursuant to the Bargaining  
10 Agreements, any failure by Defendants to comply with said request shall constitute a default of the  
11 obligations under this Agreement, which Defendants shall have ten (10) days to cure from receipt  
12 of written notice from Plaintiffs.

13 (a) In the event that amounts are found due on audit, Plaintiffs shall send a  
14 written demand to Defendants, by regular mail and email to [lgreer@aparicioconcrete.com](mailto:lgreer@aparicioconcrete.com), for  
15 payment in full of the amounts found due in the audit, including a full copy of the audit report and  
16 any findings, including contributions, liquidated damages, interest and audit fees owed.

17 (b) Defendants will be provided with ten (10) days in which to review the audit,  
18 and provide evidence to contest the findings. In the event that Defendants do not agree with the  
19 total found due, Plaintiffs shall provide any additional information or clarification requested by  
20 Defendants in writing within ten (10) days of the request therefor, or as soon as reasonably  
21 possible, and Defendants' time to respond to the audit report or comply with payment  
22 requirements shall then run from the time that Defendants receive Plaintiffs' response. Once the  
23 ten (10) day review period expires, in the event that the audit is not contested, payment in full  
24 shall be delivered to Michele R. Stafford at the address provided above.

25 (c) If the audit is contested, and Defendants provide documentation in support  
26 of the dispute, Defendants shall be notified as to whether revisions will be made to the audit. If  
27 revisions are not made, payment will be immediately due.

28 (d) If revisions are made to said audit as a result of the dispute, payment in full

1 of the revised amount shall be due within ten (10) days of Defendants' receipt of the revised  
2 billing.

3 (e) If Defendants are unable to make payment in full, Defendants may submit a  
4 written request to revise this Judgment, modifying the payment plan (by monthly amount and/or  
5 payment term), to add the amounts found due in the audit to this Judgment, subject to the terms  
6 herein. If the Judgment is so revised, Defendants shall execute the Amended Judgment or  
7 Amendment to Judgment within ten (10) days of Plaintiffs' preparation of said Amended  
8 Judgment or Amendment to Judgment. Failure to execute the revised agreement shall constitute a  
9 default of the terms herein.

10 (f) Failure by Defendants to submit either payment in full or a request to add  
11 the amounts due to this Judgment within ten (10) days of the date due per the terms written above  
12 shall constitute a default of the obligations under this agreement. All amounts found due on audit  
13 shall immediately become part of this Judgment.

14 10. Failure to comply with any of the above terms shall constitute a default of the  
15 obligations under this Stipulation and the provisions of ¶ 11 shall apply. Any unpaid or late-paid  
16 contributions, together with 20% liquidated damages and 10% per annum interest accrued on the  
17 contributions shall be added to and become a part of this Judgment and subject to the terms herein.  
18 Plaintiffs reserve all rights available under the applicable Bargaining Agreement and Declarations  
19 of Trust of the Trust Funds for collection of current and future contributions, and for any  
20 additional past contributions not included herein as may be determined by Plaintiffs, pursuant to  
21 employee timecards or paystubs, by audit, or other means, and the provisions of this agreement are  
22 in addition thereto. Defendants specifically waive the defense of the doctrine *res judicata* as to  
23 any such additional amounts determined as due.

24 11. In the event that Defendants fail to make any payment required under ¶ 5 above, or  
25 otherwise default on any of their obligations as detailed in this Stipulation, and such default is not  
26 timely cured, the following will occur:

27 (a) The entire balance of **\$31,073.32**, as specified in ¶ 4 above, plus interest,  
28 but reduced by principal payments received from Defendants, in addition to any unpaid

1 contributions then due plus 20% liquidated damages and 10% per annum interest on the unpaid or  
2 late-paid contributions, shall be immediately due and payable, together with any attorneys' fees  
3 and costs incurred during the term of this Stipulation;

4 (b) A Writ of Execution may be obtained against Defendants without further  
5 notice to Defendants, in the amount of the unpaid balance plus any additional amounts due under  
6 the terms herein. Such Writ of Execution may be obtained solely upon declaration by a duly  
7 authorized representative of Plaintiffs setting forth any payment theretofore made by or on behalf  
8 of Defendants and the balance due and owing as of the date of default;

9 (c) Defendants waive any notice of Entry of Judgment or of any Request for a  
10 Writ of Execution upon default, and expressly waive all rights to stay of execution and appeal.  
11 The declaration or affidavit of a duly authorized representative of Plaintiffs as to the balance due  
12 and owing as of the date of default shall be sufficient to secure the issuance of a Writ of  
13 Execution, without notice to Defendants; and

14 (d) Defendants shall pay all additional attorneys' fees and costs incurred by  
15 Plaintiffs in connection with the collection and allocation of the amounts owed by Defendants to  
16 Plaintiffs under this Stipulation, whether or not a default occurs herein.

17 12. Any failure on the part of Plaintiffs to take any action against Defendants as  
18 provided herein in the event of any breach of the provisions of this Stipulation shall not be deemed  
19 a waiver of any subsequent breach by Defendants of any provisions herein.

20 13. The parties agree that any payments made pursuant to the terms of this Judgment  
21 shall be deemed to have been made in the ordinary course of business as provided under 11 U.S.C.  
22 Section 547(c)(2) and shall not be claimed by Defendants as a preference under 11 U.S.C. Section  
23 547 or otherwise.

24 14. Should any provision of this Stipulation be declared or determined by any court of  
25 competent jurisdiction to be illegal, invalid, or unenforceable, the legality, validity, and  
26 enforceability of the remaining parts, terms or provisions shall not be affected thereby and said  
27 illegal, unenforceable or invalid part, term, or provision shall be deemed not to be part of this  
28 Stipulation.

1           15.     This Stipulation is limited to the agreement between the parties with respect to the  
2 unpaid and delinquent contributions and related sums enumerated herein, owed by Defendants to  
3 Plaintiffs. This Stipulation does not in any manner relate to withdrawal liability claims, if any.  
4 Defendants acknowledge that Plaintiffs expressly reserve their right to pursue withdrawal liability  
5 claims, if any, against Defendants and all of their control group members, as provided by  
6 Plaintiffs' Plan Documents, Trust Agreements incorporated into the Bargaining Agreement, and  
7 applicable laws and regulations.

8           16.     This Stipulation contains all of the terms agreed by the parties and no other  
9 agreements have been made. Any changes to this Stipulation shall be effective only if made in  
10 writing and signed by all parties hereto.

11          17.     This Stipulation may be executed in any number of counterparts and by facsimile,  
12 each of which shall be deemed an original and all of which shall constitute the same instrument.

13          18.     Defendants represent and warrant that they have had the opportunity to be or have  
14 been represented by counsel of their own choosing in connection with entering this Stipulation  
15 under the terms and conditions set forth herein, that they have read this Stipulation with care and  
16 are fully aware of and represent that they enter into this Stipulation voluntarily and without duress.

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1 19. The parties agree that the Court shall retain jurisdiction of this matter until this  
2 Judgment is satisfied.

3 Dated: June 25, 2014

**C. APARICIO CEMENT  
CONTRACTOR, INC.**

4  
5 By: \_\_\_\_\_ /S/  
Andrew John Aparicio  
6 RMO/CEO/President of Defendant

7 Dated: June 25, 2014

**ANDREW JOHN APARICIO**

8 By: \_\_\_\_\_ /S/  
9 Andrew John Aparicio, Individually

10 Dated: July 2, 2014

**OPERATING ENGINEERS LOCAL  
NO. 3 TRUST FUNDS**

11 By: \_\_\_\_\_ /S/  
12 David E. Hayner  
13 Collections Manager for Plaintiffs

14 Dated: July 7, 2014

**SALTZMAN AND JOHNSON LAW  
CORPORATION**

15 By: \_\_\_\_\_ /S/  
16 Erica J. Russell  
17 Attorneys for Plaintiffs

18 IT IS SO ORDERED.

19 IT IS FURTHER ORDERED that the calendar in this matter is vacated, and that the Court shall  
20 retain jurisdiction over this matter.

21 Dated: 7/11, 2014

  
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22 UNITED STATES DISTRICT COURT JUDGE

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**EXHIBIT A**

**JOB REPORT FORM**

\*\*\* Updated report must be faxed to Michele R. Stafford, Esq., at (415) 882-9287  
on the last business day of each month \*\*\*

Employer Name: C. APARICIO CEMENT CONTRACTOR, INC.

Report for the month of \_\_\_\_\_, 20\_\_ Submitted by: \_\_\_\_\_

Project Name:			
Project Address:			
General Contractor:			
General Contractor Address:			
General Contractor Telephone #:		Project Manager Name:	
Project Manager Telephone #:		Project Manager address:	
Contract #:		Contract Date:	
Total Contract Value:			
Work Start Date:		Work Completion Date:	
Project Bond #:		Surety:	

Project Name:			
Project Address:			
General Contractor:			
General Contractor Address:			
General Contractor Telephone #:		Project Manager Name:	
Project Manager Telephone #:		Project Manager address:	
Contract #:		Contract Date:	
Total Contract Value:			
Work Start Date:		Work Completion Date:	
Project Bond #:		Surety:	

\*\*\* Attach additional sheets as necessary \*\*\*

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