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6 Attorneys for Plaintiffs

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

9 BAY AREA PAINTERS AND TAPERS  
 PENSION TRUST FUND, *et al.*,  
 10  
 11 Plaintiffs,  
 12 v.  
 13 PACE INC., *dba* PACE DRYWALL, a  
 14 California Corporation,  
 15 Defendant.

Case No.: 3:14-cv-04382

**NOTICE OF ACKNOWLEDGMENT; and  
 JUDGMENT PURSUANT TO STIPULATION**

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 17  
 18 IT IS HEREBY STIPULATED and AGREED (“Stipulation” and/or “Judgment”) by and  
 19 between the parties hereto that Judgment shall be entered in the within action in favor of Plaintiffs  
 20 BAY AREA PAINTERS AND TAPERS PENSION TRUST FUND, *et al.* (collectively  
 21 “Plaintiffs” and/or “Trust Funds”) and against Defendant PACE INC., *dba* PACE DRYWALL  
 22 (“Defendant”), and/or any alter egos and/or successor entities, as follows:

- 23 1. Defendant entered into the Northern California Drywall Finishers Master  
 24 Agreement between District Council 16 and the Northern California Drywall Contractors  
 25 Association (the “Drywall Master Agreement”), and the Northern California Drywall Finishers  
 26 Master Agreement between District Council 16 and the Wall and Ceiling Alliance (the “Wall and  
 27 Ceiling Agreement”), requiring employer contributions to Plaintiffs’ ERISA Funds. The Drywall  
 28 Contractors Master Agreement and the Wall and Ceiling Agreement are referred to collectively

1 herein as the “Bargaining Agreements.” The Bargaining Agreements have continued in full force  
2 and effect to the present time.

3           2. Alan Mauldin, in his capacity as President and Chief Executive Officer of  
4 Defendant, hereby acknowledges that he is authorized to receive service and has received service  
5 of the following documents in this action on behalf of the named Defendant: Summons;  
6 Complaint; Dispute Resolution Procedures in the Northern District of California; Order Setting  
7 Initial Case Management Conference and ADR Deadlines; Standing Order for All Judges of the  
8 Northern District of California; Certification of Interested Entities or Persons Pursuant to Civil  
9 Local Rule 3-16; Instructions for Completion of ADR Forms Regarding Selection of an ADR  
10 Process; Stipulation [and Proposed Order] Selecting ADR Process; Notice of Need for ADR  
11 Phone Conference; ADR Certification by Parties and Counsel; Filing Procedures (Oakland); ECF  
12 Registration Information Handout; Welcome to the U.S. District Court; Notice of Assignment to a  
13 Magistrate Judge, Consent, Declination; Consent to Proceed Before a Magistrate Judge and  
14 Request for Reassignment to a United States District Judge; Notice of Impending Reassignment to  
15 a United States District Court Judge; Order Reassigning Case; Order Setting Case Management  
16 Conference of Reassigned Case.

17           3. Alan Mauldin (“Guarantor”) confirms that he is authorized to enter into this  
18 Stipulation on behalf of Defendant and confirms that he is personally guaranteeing the amounts  
19 due pursuant to the terms of this Stipulation. Guarantor further confirms that all successors in  
20 interest, assignees, and affiliated entities (including, but not limited to, parent or other controlling  
21 companies), and any companies with which Defendant joins or merges, if any, shall also be bound  
22 by the terms of this Stipulation as Guarantors. This shall include any additional entities in which  
23 Guarantor is an officer, owner, or possesses any ownership interest. Defendant/Guarantor and all  
24 such entities shall specifically consent to the Court’s jurisdiction, in writing, at the time of any  
25 assignment, affiliation or purchase, as well as to all other terms herein.

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4. Defendant is indebted to Plaintiffs as follows:

<b>CONTRIBUTIONS:</b>		
<b>July 2014</b>		\$112,544.97
20% Liquidated Damages on July 2014		\$22,508.99
5% Interest on July 2014 (through 09/29/14)		\$447.18
<b>August 2014</b>		\$84,918.28
20% Liquidated Damages on August 2014		\$16,983.66
<b>SUBTOTAL:</b>		<b>\$237,403.08</b>
Attorneys' Fees (through 09/28/14)		\$2,489.00
Complaint Filing Fee		\$400.00
<b>TOTAL AMOUNT DUE</b>		<b>\$240,292.08</b>

5. Defendant/Guarantor shall *conditionally* pay the amount of **\$200,799.43**, representing all above amounts, less conditionally waived liquidated damages in the amount of **\$39,492.65**. *This conditional waiver is expressly conditioned upon Trustee approval upon timely compliance with all of the terms of this Stipulation*, as follows:

(a) Beginning on or before **September 30, 2014**, and continuing on or before the last business day of each month thereafter, for a period of twelve (12) months, through and including **August 31, 2015**, Defendant/Guarantor shall pay to Plaintiffs the amount of **\$17,190.00** per month;

(b) Payments may be made by joint check, to be endorsed by Defendant prior to submission. Payments made by joint check may be applied toward Defendant's 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 Defendant's 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;

(c) Defendant/Guarantor shall have the right to increase the monthly payments at any time and there is no penalty for prepayment;

(d) Payments shall be applied first to unpaid interest and then to unpaid principal. The unpaid principal balance shall bear interest at the rate of 5% per annum from October 1, 2014, in accordance with the Bargaining Agreements and Plaintiffs' Trust Agreements;

1 (e) Checks shall be made payable to the *District Council 16 Northern*  
2 *California Trust Funds*, and delivered on or before each due date to Michele R. Stafford, Esq. at  
3 Saltzman & Johnson Law Corporation, 44 Montgomery Street, Suite 2110, San Francisco,  
4 California 94104, or to such other address as may be specified by Plaintiffs;

5 (f) Plaintiffs may require that Defendant pay electronically by wire transfer;

6 (g) At the time that Defendant/Guarantor makes the twelfth (12<sup>th</sup>) stipulated  
7 payment, Defendant/Guarantor may submit a written request for waiver of their liquidated  
8 damages directed to the Board of Trustees, but sent to Saltzman and Johnson Law Corporation  
9 with their 12th stipulated payment. Such waiver will not be considered until and unless all other  
10 amounts are paid in full and Defendant's Trust Fund account is otherwise current;

11 (h) Prior to the last payment pursuant to this Stipulation, Plaintiffs shall advise  
12 Defendant/Guarantor, in writing, by first class mail and email to [adm@pacedrywall.com](mailto:adm@pacedrywall.com), as to the  
13 final amount due, including additional interest and all additional attorneys' fees and costs incurred  
14 by Plaintiffs in connection with the collection and allocation of the amounts owed to Plaintiffs  
15 under this Stipulation. Defendant/Guarantor shall pay all additional interest and additional  
16 attorneys' fees and costs incurred by Plaintiffs regardless of whether or not Defendant defaults  
17 herein. All additional amounts due pursuant to the provisions hereunder shall also be paid in full  
18 with the final August 31, 2015 stipulated payment; and

19 (i) Failure to comply with any of the above terms shall constitute a default of  
20 the obligations under this Stipulation and the provisions of ¶14 shall apply.

21 6. In the event that any check is not timely submitted or fails to clear the bank, or is  
22 unable to be negotiated for any reason for which Defendant/Guarantor is responsible, Defendant  
23 shall be considered to be in default of the Judgment entered. If this occurs, Plaintiffs shall make a  
24 written demand to Defendant/Guarantor, by first class mail and email to [adm@pacedrywall.com](mailto:adm@pacedrywall.com),  
25 to cure said default *within seven (7) days of the date of the notice from Plaintiffs*. If caused by a  
26 failed check, default will only be cured by the issuance of a replacement cashier's check, delivered  
27 to Saltzman and Johnson Law Corporation within the seven (7) day cure period. If  
28 Defendant/Guarantor elect to cure said default, and Plaintiffs elect to accept future payments, *all*

1 *such future payments shall be made by cashier's check at Plaintiffs' request.* In the event default is  
2 not cured, all amounts remaining due hereunder shall be due and payable on demand by Plaintiffs.

3 7. Beginning with contributions due for hours worked by Defendant's employees  
4 during the month of September 2014, and for every month thereafter until this Judgment is  
5 satisfied, **Defendant shall remain current in reporting and payment of contributions** due to  
6 Plaintiffs under the current Bargaining Agreements and under all subsequent Collective  
7 Bargaining Agreements, if any, and the Declarations of Trust as amended. The Collective  
8 Bargaining Agreements and Trust Agreements provide that all benefit contributions are due on or  
9 before the fifteenth (15<sup>th</sup>) day of the month following the month in which hours were worked and  
10 are delinquent if not received by the last business day of that month.

11 Until this judgment is satisfied, Defendant shall **submit all monthly contribution reports**  
12 **and payments to Saltzman and Johnson Law Corporation.** The reports and payments shall be  
13 delivered to Michele R. Stafford, Esq. at Saltzman & Johnson Law Corporation, 44 Montgomery  
14 Street, Suite 2110, San Francisco, California 94104, or to such other address as may be specified  
15 by Plaintiffs, by the last business day of each month. Defendant shall send copies of its original  
16 contribution reports and payments to the Trust Funds. Plaintiffs may require that Defendant pay  
17 contributions electronically by wire transfer. Failure to comply with these terms shall constitute a  
18 default of the obligations under this Stipulation and the provisions of ¶ 12 shall apply.

19 8. Beginning with the month of September 2014, and for every month thereafter,  
20 **Defendant shall fully disclose all jobs on which it is working by providing Plaintiffs with**  
21 **fully completed job reports** on the form attached hereto as Exhibit A. Upon request by Plaintiffs,  
22 Defendant shall also provide Plaintiffs with copies of Certified Payroll Reports for any and all  
23 Public Works jobs, or any other job for which Certified Payroll Reports are required. Defendant's  
24 updated monthly job reports and Certified Payroll Reports (if requested) shall be delivered to  
25 Michele R. Stafford, Esq. at Saltzman & Johnson Law Corporation, 44 Montgomery Street, Suite  
26 2110, San Francisco, California 94104, or to such other address as may be specified by Plaintiffs,  
27 by the last business day of each month.

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1 This requirement remains in full force and effect regardless of whether or not Defendant  
2 has ongoing work, whether Defendant's account with the Trust Funds is active, or whether  
3 Defendant is signatory to a Collective Bargaining Agreement with the Union. If, for any reason,  
4 Defendant has no work to report during a given month, Defendant shall submit the job report form  
5 (Exhibit A) indicating that there are no current jobs. **Defendant's first job report (regarding**  
6 **September 2014 jobs) is due on or before October 30, 2014.**

7 Failure by Defendant to timely submit fully completed monthly job reports and Certified  
8 Payroll Reports (if applicable) as described above shall constitute a default of the obligations  
9 under this Stipulation and the terms of ¶ 12 shall apply.

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

15 (a) In the event that amounts are found due on audit, Plaintiffs shall send a  
16 written demand to Defendant by first class mail and email to [adm@pacedrywall.com](mailto:adm@pacedrywall.com), for payment  
17 in full of the amounts found due in the audit, including a full copy of the audit report and any  
18 findings, including contributions, liquidated damages, interest and audit fees owed.

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

27 (c) If the audit is contested, and Defendant provides documentation in support  
28 of the dispute, Defendant shall be notified as to whether revisions will be made to the audit. If

1 revisions are not made, payment will be immediately due.

2 (d) If revisions are made to said audit as a result of the dispute, payment in full  
3 of the revised amount shall be due within ten (10) days of Defendant's receipt of the revised  
4 billing.

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

12 (f) Failure by Defendant to submit either payment in full or a request to add the  
13 amounts due under this Judgment within ten (10) days of the date of Plaintiffs' demand for  
14 payment shall constitute a default of the obligations under this agreement. All amounts found due  
15 on audit shall immediately become part of this Judgment.

16 10. Failure to comply with any of the above terms shall constitute a default of the  
17 obligations under this Stipulation and the provisions of ¶ 12 shall apply.

18 11. Any unpaid or late-paid contributions, together with 20% liquidated damages and  
19 5% per annum interest accrued on the contributions shall be added to and become a part of this  
20 Judgment and subject to the terms herein. Plaintiffs reserve all rights available under the  
21 applicable Bargaining Agreements and Declarations of Trust of the Trust Funds for collection of  
22 current and future contributions, and for any additional past contributions and related amounts not  
23 included herein as may be determined by Plaintiffs to be due, pursuant to employee timecards or  
24 paystubs, by audit, or other means, and the provisions of this agreement are in addition thereto.  
25 Defendant/Guarantor specifically waive the defense of the doctrine *res judicata* as to any such  
26 additional amounts determined as due.

27 12. In the event that Defendant/Guarantor fail to make any payment required herein, or  
28 otherwise defaults on any of their obligations as detailed in this Stipulation, and such default is not

1 timely cured, the following shall occur:

2 (a) The entire balance of **\$240,292.08**, plus interest, but reduced by principal  
3 payments received from Defendant/Guarantor, shall be immediately due and payable, in addition  
4 to any unpaid contributions then due, plus 20% liquidated damages and 5% per annum interest on  
5 the unpaid or late paid contributions, together with any attorneys' fees and costs incurred during  
6 the term of this Stipulation;

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

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

17 (d) Defendant/Guarantor shall pay all additional attorneys' fees and costs  
18 incurred by Plaintiffs in connection with the collection and allocation of the amounts owed by  
19 Defendant/Guarantor to Plaintiffs under this Stipulation, whether or not a default occurs herein.

20 13. Any failure on the part of the Plaintiffs to take any action against  
21 Defendant/Guarantor as provided herein in the event of any breach of the provisions of this  
22 Stipulation shall not be deemed a waiver of any subsequent breach by the Defendant/Guarantor of  
23 any provisions herein.

24 14. The parties agree that any payments made pursuant to the terms of this Judgment,  
25 shall be deemed to have been made in the ordinary course of business as provided under 11 U.S.C.  
26 Section 547(c)(2) and shall not be claimed by Defendant/Guarantor as a preference under 11  
27 U.S.C. Section 547 or otherwise.

28 15. This Stipulation is limited to the agreement between the parties with respect to the



1 unpaid and delinquent contributions and related sums enumerated herein, owed by Defendant to  
2 Plaintiffs. This Stipulation does not in any manner relate to withdrawal liability claims, if any.  
3 Defendant acknowledges that Plaintiffs expressly reserve their right to pursue withdrawal liability  
4 claims, if any, against Defendant and all of its control group members, as provided by Plaintiffs'  
5 Plan Documents, Trust Agreements incorporated into their Bargaining Agreements, and applicable  
6 laws and regulations.

7         16.     Should any provision of this Stipulation be declared or determined by any court of  
8 competent jurisdiction to be illegal, invalid, or unenforceable, the legality, validity, and  
9 enforceability of the remaining parts, terms or provisions shall not be affected thereby and said  
10 illegal, unenforceable or invalid part, term, or provision shall be deemed not to be part of this  
11 Stipulation.

12         17.     This Stipulation contains all of the terms agreed by the parties and no other  
13 agreements have been made. Any changes to this Stipulation shall be effective only if made in  
14 writing and signed by all parties hereto.

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

17         19.     Defendant/Guarantor represent and warrant that they have had the opportunity to  
18 be, or have been, represented by counsel of their own choosing in connection with entering this  
19 Stipulation under the terms and conditions set forth herein, that they have read this Stipulation  
20 with care and are fully aware of and represent that they enter into this Stipulation voluntarily and  
21 without duress.

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

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4           Dated: October 6, 2014

**PACE INC., dba PACE DRYWALL**

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By: \_\_\_\_\_/S/\_\_\_\_\_  
Alan Mauldin, CEO/RMO/President

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8           Dated: October 6, 2014

**ALAN MAULDIN**

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By: \_\_\_\_\_/S/\_\_\_\_\_  
Alan Mauldin, Individually

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12           Dated: October 7, 2014

**SALTZMAN & JOHNSON  
LAW CORPORATION**

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By: \_\_\_\_\_/S/\_\_\_\_\_  
Adrian L. Canzoneri  
Attorneys for Plaintiffs

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IT IS SO ORDERED.

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

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Dated: October 10, 2014

  
UNITED STATES DISTRICT COURT JUDGE

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**EXHIBIT A  
JOB REPORT FORM**

Updated Job Reports shall be delivered to Saltzman & Johnson Law Corporation  
by the last business day of each month  
at 44 Montgomery Street, Suite 2110, San Francisco, California 94104

Employer Name: PACE INC. dba PACE DRYWALL

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 email 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 email address:	
Contract #:		Contract Date:	
Total Contract Value:			
Work Start Date:		Work Completion Date:	
Project Bond #:		Surety:	

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