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6 Attorneys for Plaintiffs

7 UNITED STATES DISTRICT COURT

8 FOR THE NORTHERN DISTRICT OF CALIFORNIA

9 DISTRICT COUNCIL 16 NORTHERN
 CALIFORNIA HEALTH AND WELFARE TRUST
 10 FUND, et al.,

11 Plaintiffs,

12 v.

13 FLOORTEC, INC., a California corporation,

14 Defendant.

Case No: C10-1702 CW

**NOTICE AND ACKNOWLEDGMENT
 and JUDGMENT PURSUANT TO
 STIPULATION**

15 IT IS HEREBY STIPULATED by and between the parties hereto, that Judgment may be
 16 entered in the within action in favor of the Plaintiffs DISTRICT COUNCIL 16 NORTHERN
 17 CALIFORNIA HEALTH AND WELFARE TRUST FUND, et al. (collectively “Plaintiffs” or
 18 “Trust Funds”) and against Defendant FLOORTEC, INC., a California Corporation, and its
 19 successor entities (“Defendant”), as follows:

20 1. Defendant entered into a valid Collective Bargaining Agreement with the
 21 District Council No. 16 of the International Union of Painters and Allied Trades and the Northern
 22 California Floor Covering Association and Floor Covering Association of the Central Coast
 23 Counties (hereinafter "Bargaining Agreement"). This Bargaining Agreement has continued in full
 24 force and effect to the present time.

25 2. Steve Brian Homan, RMO/CEO/President of Defendant FloorTec, Inc., hereby
 26 acknowledges that he is authorized to receive service and has received the following documents in
 27 this action: Summons; Complaint; Dispute Resolution Procedures in the Northern District of
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JUDGMENT PURSUANT TO STIPULATION

Case No.: C10-1702 CW

1 California; Order Setting Initial Case Management Conference and ADR Deadlines; Standing
 2 Orders for Magistrate Judge Bernard Zimmerman; Standing Order for All Judges of the Northern
 3 District of California; Instructions for Completion of ADR Forms Regarding Selection of an ADR
 4 Process; Stipulation and [Proposed Order] Selecting ADR Process; Notice of Need for ADR
 5 Phone Conference; ADR Certification by Parties and Counsel; Notice of Assignment of Case to a
 6 United States Magistrate Judge for Trial; ECF Registration Information Handout; Welcome to the
 7 US District Court, San Francisco; Certification of Interested Entities or Persons Pursuant to Civil
 8 Local Rule 3-16; Declination to Proceed Before a Magistrate Judge and Request for Reassignment
 9 to a United States District Judge; Notice of Impending Reassignment to a United States District
 10 Court Judge; Amended Notice of Impending Reassignment to a United States District Court
 11 Judge; Reassignment Order; and Case Management Scheduling Order for Reassigned Civil Case.

12 3. Defendant has become indebted to the Trust Funds as follows:

BAY AREA ACCOUNT NO.: 000000-223-000			
January 2010	Contributions	\$58,548.19	
	20% Liquidated Damages	\$11,709.64	
	5% Interest (through 4/22/10)	\$425.08	
			\$70,682.91
February 2010	Contributions	\$14,733.35	
	20% Liquidated Damages	\$2,946.67	
	5% Interest (through 4/22/10)	\$44.40	
			\$17,724.42
	Liquidated Damages on Late-Paid Contributions (1/09 – 12/09)		\$2,596.82
	Interest on Late-Paid Contributions (1/09 – 12/09)		\$757.39
SACRAMENTO ACCOUNT NO.: 000000-3866-005			
January 2010	Contributions	\$7,047.03	
	20% Liquidated Damages	\$1,409.41	
	5% Interest (through 4/22/10)	\$51.16	
			\$8,507.60
February 2010	Contributions	\$4,553.16	
	20% Liquidated Damages	\$910.63	
	5% Interest (through 4/22/10)	\$13.72	
			\$5,477.51
	SUBTOTAL		\$105,746.65
	Attorneys' Fees (through 4/21/10)		\$1,446.50
	Cost of Suit		\$350.00
	TOTAL DUE		\$107,543.15

1 4. Defendants shall *conditionally* pay the amount of **\$87,969.98**, representing all
2 above amounts, less liquidated damages in the amount of **\$19,573.17** *conditioned upon Trustees*
3 *approval and timely compliance with all of the terms of this Stipulation*, as follows:

4 (a) Beginning on May 10, 2010, and no later than the 10th day of each month
5 thereafter for a period of twelve (12) months, through and including April 10, 2011, Defendant
6 shall pay to Plaintiffs the amount of **\$7,511.00** per month. Payments may be made by joint check,
7 to be endorsed prior to submission;

8 (b) Defendant shall have the right to increase the monthly payments at any time
9 and there is no penalty for early payment. Defendant may request a “payout demand” at any time
10 during the payment period;

11 (c) Payments shall be applied first to unpaid interest and then to unpaid
12 principal. The unpaid principal balance shall bear interest at the rate of 5% per annum in
13 accordance with Plaintiffs’ Trust Agreements;

14 (d) Payments shall be made payable to the “***District Council 16 Health and***
15 ***Welfare Trust Fund***” and delivered to Michele R. Stafford at Saltzman & Johnson Law
16 Corporation, 44 Montgomery Street, Suite 2110, San Francisco, California 94104, **to be received**
17 **on or before the 10th day of each month**, or to such other address as may be specified by
18 Plaintiffs;

19 (e) Prior to the last payment pursuant to this Stipulation, Plaintiffs will advise
20 Defendant as to the final amount due, including interest and additional attorneys’ fees and costs as
21 well as any other amounts due under the terms herein. Said amount shall be paid with the last
22 payment, on or before April 10, 2011. The final payment shall not include the liquidated damages
23 that have been conditionally waived. After the final payment is submitted and clears the bank and
24 once Defendant’s account with the Trust Funds is otherwise current, Plaintiffs shall submit the
25 request for waiver to the Trustees. Said waiver request ***shall not be considered unless and until***
26 ***all obligations hereunder have been met***, including but not limited to payment of all amounts due
27 under the terms of the Stipulation and remaining current in contributions owed to the Trust Funds.

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1 Plaintiffs shall advise Defendant thereafter as to whether the conditional waiver of
2 liquidated damages has been granted in whole or in part. If liquidated damages remain due, these
3 amounts will be paid upon demand in one lump sum payment. In the event that Defendant cannot
4 make payment in full of the remaining liquidated damages, Defendant may request an extension of
5 the payment plan herein.

6 5. Beginning with contributions due for hours worked by Defendant's employees
7 during the month of March 2010, to be postmarked no later than April 15, 2010 and delinquent if
8 not received by April 30, 2010, and for every month thereafter, Defendant **shall remain current**
9 **in reporting and payment of any 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. **Defendant shall fax a copy of the contribution report**
12 **for each month, together with a copy of that payment check, to Michele R. Stafford at 415-**
13 **882-9287, prior to sending the payment to the Trust Fund office. To the extent that**
14 **Defendant is working on a Public Works job, or any other job for which Certified Payroll**
15 **Reports are required, copies of said Reports will be faxed to Michele R. Stafford,**
16 **concurrently with their submission to the general contractor, owner or other reporting**
17 **agency.**

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

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1 7. Defendant shall make full disclosure of all jobs on which they are working by
2 providing Plaintiffs with an ongoing and updated list of jobs including, but not limited to, name
3 and address of job, general contractor, certified payroll if a public works job, and period.
4 **Defendant shall fax said updated list each month together with the contribution report (as**
5 **required by this Stipulation) to Michele R. Stafford at 415-882-9287.**

6 8. Steve Brian Homan acknowledges that he is the RMO/CEO/President of
7 FLOORTEC, INC., and that he specifically consents to the Court’s jurisdiction as well as the use
8 of a Magistrate Judge for all proceedings herein. Mr. Homan (hereinafter “Guarantor”) also
9 confirms that he is personally guaranteeing the amounts due pursuant to the terms of this
10 Stipulation and further acknowledges that all affiliates, related entities and successors in interest to
11 FLOORTEC, INC. and/or any subsequent entity wherein Mr. Homan is a principal shall also be
12 bound by the terms of this Stipulation as Guarantors, and also consents to this Court’s jurisdiction
13 as well as the use of a Magistrate Judge.

14 9. In the event that any check is not timely submitted or submitted by Defendant but
15 fails to clear the bank, or is unable to be negotiated for any reason for which Defendant is
16 responsible, this shall be considered to be a default on the Judgment entered. If Defendant fails to
17 submit its contribution reports, certified payroll reports (if any) and job lists or fails to comply
18 with *any* of the terms of the Stipulation herein, this too shall constitute a default.

19 If a default occurs, Plaintiffs shall make a written demand, sent via facsimile and first class
20 mail to Defendant/Guarantor to cure said default. Default will only be cured by the issuance of a
21 replacement, cashier’s check if the default is caused by a failed check, or at the request of
22 Plaintiffs, to be delivered to Saltzman and Johnson Law Corporation within seven (7) days of the
23 date of the notice from Plaintiffs. If Defendant/Guarantor elects to cure said default, and Plaintiffs
24 elect to accept future payments, all such payments shall be made by cashier’s check if the default
25 is caused by a failed check or upon request by Plaintiffs.

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1 10. In the event the default is not cured, all amounts remaining due hereunder,
2 including conditionally waived liquidated damages, as well as any additional amounts due
3 pursuant to the terms herein, shall be due and payable on demand by Plaintiffs as follows:

4 (a) The entire amount of **\$107,543.15** plus interest, reduced by principal
5 payments received by Plaintiffs, but increased by any unpaid contributions then due, plus 20%
6 liquidated damages and 5% per annum interest thereon, shall be immediately due, together with
7 any additional attorneys' fees and costs and other amounts due herein;

8 (b) A writ of execution may be obtained against Defendant/Guarantor without
9 further notice, in the amount of the unpaid balance, plus any additional amounts under the terms
10 herein, upon declaration of a duly authorized representative of the Plaintiffs setting forth any
11 payment theretofore made by or on behalf of Defendant/Guarantor and the balance due and owing
12 as of the date of default. Defendant/Guarantor specifically consents to the authority of a
13 Magistrate Judge for all proceedings, including, but not limited to, Plaintiffs' obtaining a writ of
14 execution;

15 (c) Defendant/Guarantor waives notice of entry of judgment and expressly
16 waives all rights to stay of execution and appeal. The declaration or affidavit of a duly authorized
17 representative of Plaintiffs as to the balance due and owing as of the date of default shall be
18 sufficient to secure the issuance of a writ of execution;

19 (d) Defendant/Guarantor shall pay all additional costs and attorneys' fees
20 incurred by Plaintiffs in connection with collection and allocation of the amounts owed by
21 Defendant/Guarantor to Plaintiffs under this Stipulation, regardless of whether a default occurs
22 herein.

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

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1 12. In the event of the filing of a bankruptcy petition by Defendant and/or Guarantor,
2 the parties agree that any payments made by Defendant/Guarantor pursuant to the terms of this
3 judgment, shall be deemed to have been made in the ordinary course of business as provided under
4 11 U.S.C. Section 547(c)(2) and shall not be claimed by Defendant/Guarantor as a preference
5 under 11 U.S.C. Section 547 or otherwise. Defendant/Guarantor nevertheless represents that no
6 bankruptcy filing is anticipated.

7 13. 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 14. This Stipulation is limited to the agreement between the parties with respect to the
13 delinquent contributions and related sums enumerated herein, owed by Defendants to the
14 Plaintiffs. This Stipulation does not in any manner relate to withdrawal liability claims, if any.
15 Defendant/Guarantor acknowledge that the Plaintiffs expressly reserve their right to pursue
16 withdrawal liability claims, if any, against Defendant/Guarantor as provided by the Plaintiffs' Plan
17 Documents, Trust Agreements incorporated into their Collective Bargaining Agreement, and the
18 law.

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

21 16. The parties agree that the Court shall retain jurisdiction of this matter until this
22 Judgment is satisfied.

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17. All parties represent and warrant that they have had the opportunity to be or have been represented by counsel of their own choosing in connection with entering this Stipulation under the terms and conditions set forth herein, and that they enter into this Stipulation voluntarily.

Dated: April 30, 2010

FLOORTEC, INC.

By: _____/s/_____
Steven Brian Homan, RMO/CEO/President

Dated: April 30, 2010

STEVEN BRIAN HOMAN

By: _____/s/_____
Individually, as Guarantor

Dated: May 6, 2010

**SALTZMAN & JOHNSON
LAW CORPORATION**

By: _____/s/_____
Michele R. Stafford
Attorneys for Plaintiffs

IT IS SO ORDERED

Dated: May 12, 2010


UNITED STATES DISTRICT COURT JUDGE