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

10 SERVICE EMPLOYEES INTERNATIONAL
 UNION NATIONAL INDUSTRY PENSION
 11 FUND; MIKE GARCIA, Trustee; ROD
 BASHIR, Trustee; CHARLES RIDGELL,
 12 Trustee; SHARLEEN STEWART, Trustee;
 STEVEN FORD, Trustee; EDWARD J.
 13 MANKO, Trustee; JOHN J. SHERIDAN,
 Trustee; LARRY T. SMITH, Trustee; FRANK
 14 A. MAXSON, Trustee,

CASE NO.: 10-02647 DMR

STIPULATION FOR ENTRY OF
 JUDGMENT AND JUDGMENT

15 Plaintiffs,

16 vs.

17 TRANQUILITY, INC., a California
 corporation doing business as SAN MIGUEL
 18 VILLA,

19 Defendant.

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21 IT IS HEREBY STIPULATED by and between the parties hereto, that the
 22 Judgment shall be entered in the within action in favor of the Plaintiffs SERVICE EMPLOYEES
 23 INTERNATIONAL UNION NATIONAL INDUSTRY PENSION FUND, et al. (“Plaintiffs” or
 24 “Pension Fund”), and against Defendant TRANQUILITY, INC., a California corporation doing
 25 business as SAN MIGUEL VILLA, and/or alter egos and/or successor entities (“Defendant”), as
 26 follows:

- 27 1. Defendant entered into valid Collective Bargaining Agreements with the Health
 28 Care Workers Union Local 250, SEIU, AFL-CIO and SEIU, United Healthcare-West, CTW, CLC

1 (hereinafter "Bargaining Agreements"). The Bargaining Agreement with SEIU, United
2 Healthcare-West, CTW, CLC continues in full force and effect to the present time.

3 2. Defendant has become indebted to the Pension Fund as follows:

4 Audit I (2005 – 2006)	Contributions	\$30,481.10	
5	20% Liquidated Damages	6,096.22	
6	Interest (to 5/1/11)	14,425.31	
	Audit testing fee	2,936.33	
7 <i>Audit I Subtotal</i>			\$53,938.96
8 Audit II (2007 – 2010)	Contributions	\$43,492.36	
9	20% Liquidated Damages	1,980.47	
	Interest (to 5/1/11)	10,562.45	
	Audit testing fee	7,603.40	
10	Overpayments	(780.24)	
11 <i>Audit II Subtotal</i>			\$62,858.44
	<i>Attorney's Fees and Costs</i>		\$12,271.50
	TOTAL		\$129,068.90

12 3. Defendant shall **conditionally** pay the amount of **\$110,452.48**, representing the
13 total amount due, less liquidated damages and testing fees in the sum of \$18,616.42. *This waiver is*
14 *expressly conditioned upon timely compliance with all of the terms of this Stipulation*, as follows:

15 (i) Beginning on June 1, 2011, and on or before the 1st days of each month
16 thereafter, for a period of 6 months, through November 1, 2011, Defendant shall pay to Plaintiffs
17 the amount of **\$18,408.75** per month.

18 (ii) Payments shall be applied first to unpaid interest, then to attorney's fees and
19 costs and then to unpaid principal. Any delinquent payment shall bear interest from at the rate of
20 10% per annum.

21 (iv) Checks shall be made payable to the **SEIU National Industry Pension**
22 **Fund**, and delivered on or before each due date to Kimberly Hancock at Saltzman & Johnson Law
23 Corporation, 44 Montgomery Street, Suite 2110, San Francisco, California 94104, or to such other
24 address as may be specified by Plaintiffs.

25 4. In the event that any check is not timely submitted or fails to clear the bank, or is
26 unable to be negotiated for any reason for which Defendant is responsible, Defendant shall be
27 considered to be in default of the Judgment entered. If this occurs, Plaintiffs shall make a written
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1 demand to Defendant to cure said default *within seven (7) days of the date of the notice from*
2 *Plaintiffs*. If caused by a failed check, default will only be cured by the issuance of a replacement
3 *cashier's check*, delivered to Saltzman and Johnson Law Corporation within the seven (7) day
4 cure period. If Defendant elects to cure said default, and Plaintiffs elect to accept future payments,
5 *all such future payments shall be made by cashier's check*. In the event default is not cured, all
6 amounts remaining due hereunder shall be due and payable on demand by Plaintiffs.

7 5. Beginning with contributions due for hours worked by Defendant's employees
8 during the month of June 2011, due on July 15, 2011 and delinquent if not received by the Pension
9 Fund before the last business day of the month, and for every month thereafter for a period of
10 twelve months, or until June 2012 (for hours worked in May 2012), Defendant shall remain
11 current in contributions due to Plaintiffs under the current Collective Bargaining Agreement and
12 under all subsequent Collective Bargaining Agreements, if any, and the Agreement and
13 Declaration of Trust as amended. Failure to comply with these terms shall also constitute a
14 default of the obligations under this Agreement and the provisions of ¶ 7 shall apply.

15 6. Failure to comply with any of the above terms shall constitute a default of the
16 obligations under this Agreement and the provisions of ¶ 7 shall apply. Any such unpaid or late
17 paid contributions, together with 20% liquidated damages and 10% per annum interest accrued on
18 the contributions, pursuant to the Trust Agreements, shall be added to and become a part of this
19 Judgment and subject to the terms herein. Plaintiffs reserve all rights available under the
20 applicable Bargaining Agreement and Declarations of Trust of the Pension Fund for collection of
21 current and future contributions, and for any additional past contributions not included herein as
22 may be determined by Plaintiffs, pursuant to employee timecards or paystubs, by audit, or other
23 means, and the provisions of this agreement are in addition thereto. Defendant specifically waives
24 the defense of the doctrine *res judicata* as to any such additional amounts determined as due.

25 7. In the event that Defendant fails to make any payment required under ¶ 3 above, or
26 fails to remain current in any contributions under ¶ 5 above, then:

27 (a) The entire amount of **\$129,068.90**, plus interest, reduced by principal
28 payments received by Plaintiffs, but increased by any unpaid contributions then due, plus 20%

1 liquidated damages and 10% per annum interest on those unpaid contributions until paid, shall be
2 immediately due, together with any additional attorneys' fees and costs incurred during the term of
3 this Stipulation.

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

9 (c) Defendant waives any notice of Entry of Judgment or of any Request for a
10 Writ of Execution upon default, and expressly waives 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 Defendant.

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

17 11. Any failure on the part of the Plaintiffs to take any action against Defendant 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 the Defendant of any provisions herein.

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

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

1 Stipulation.

2 14. This Stipulation is limited to the agreement between the parties with respect to the
3 delinquent contributions and related sums enumerated herein, owed by Defendant to the Plaintiffs.
4 This Stipulation does not in any manner relate to withdrawal liability claims, if any. Defendant
5 acknowledges that the Plaintiffs expressly reserve their right to pursue withdrawal liability claims,
6 if any, against Defendant as provided by the Plaintiffs' Plan Documents, Trust Agreements
7 incorporated into their Collective Bargaining Agreement, and the law.

8 15. 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 16. 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 17. Defendant represents and warrants that it has been represented by counsel of his
14 own choosing in connection with entering this Stipulation under the terms and conditions set forth
15 herein, that it has read this Agreement with care and is fully aware of and represent that it enters
16 into this Stipulation voluntarily and without duress.

17 18. Provided the sums due under this Stipulation, including all amounts detailed in
18 paragraph 2, all amounts due pursuant to paragraph 5 and all additional reasonable attorneys' fees,
19 have been timely paid in full, Plaintiffs hereby forever release and discharge all claims against
20 Defendant based upon or arising out of the claims for delinquent contributions, interest, attorneys'
21 fees, auditors' fees, costs, and liquidated damages made in this action and all demands relating
22 thereto (the "Released Matters".) Thus, for the purpose of implementing a full and complete
23 release, subject to the reservation of rights in paragraphs 6 and 14 herein, Plaintiffs expressly
24 acknowledge this Stipulation is intended to include in its effect all of the claims that were or could
25 have been raised concerning the Released Matters, and this Stipulation contemplates
26 extinguishment of all such claims that were or could have been raised concerning the Released
27 Matters.

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