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UNITED STATES DISTRICT COURT

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FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 DISTRICT COUNCIL 16 NORTHERN
 CALIFORNIA HEALTH AND WELFARE TRUST
 12 FUND, et al.,

Case No.: C11-4960 DMR

13 Plaintiffs,

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

14 v.

15 MCC FLOORING CONTRACTORS, INC., a
 California Corporation; RAOUL WESLEY
 16 FULCHER, SR., an Individual,

17 Defendants.

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19 IT IS HEREBY STIPULATED and AGREED (the “Stipulation”) by and between the
 20 parties hereto, that Judgment shall be entered in the within action in favor of the Plaintiffs
 21 DISTRICT COUNCIL 16 NORTHERN CALIFORNIA HEALTH AND WELFARE TRUST
 22 FUND, et al. (collectively “Plaintiffs” or “Trust Funds”) and against Defendants MCC
 23 FLOORING CONTRACTORS, INC., a California Corporation, and RAOUL WESLEY
 24 FULCHER, SR., an Individual, and/or alter egos and/or successor entities (collectively
 25 “Defendants”), as follows:

26 1. Defendants entered into a valid Collective Bargaining Agreement with the District
 27 Council No. 16 of the International Union of Painters and Allied Trades and the Northern

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1 California Floor Covering Association and Floor Covering Association of the Central Coast
2 Counties (hereinafter "Bargaining Agreement"). This Bargaining Agreement has continued in full
3 force and effect to the present time.

4 2. Raoul Wesley Fulcher, Sr., as an individual Defendant, and in his capacity as
5 RMO/CEO/President of Defendant MCC Flooring Contractors, Inc., hereby acknowledges that he
6 is authorized to receive service and has received the following documents in this action:
7 Summons; Complaint; Dispute Resolution Procedures in the Northern District of California; Order
8 Setting Initial Case Management Conference and ADR Deadlines; Standing Order for Magistrate
9 Judge Donna M. Ryu; Standing Order for All Judges of the Northern District of California;
10 Instructions for Completion of ADR Forms Regarding Selection of an ADR Process; Stipulation
11 and [Proposed Order] Selecting ADR Process; Notice of Need for ADR Phone Conference; ADR
12 Certification by Parties and Counsel; ECF Registration Information Handout; Welcome to the
13 Oakland Divisional Office of the United States District Court; Notice of Assignment to a
14 Magistrate Judge, Consent, Declination; Consenting to a Magistrate Judge's Jurisdiction in the
15 Northern District of California; and Certification of Interested Entities or Persons Pursuant to Civil
16 Local Rule 3-16.

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

1/10	Liquidated Damages	\$663.36	
	5% p/a Interest (to 12/10/10)	\$10.00	
			\$673.36
5/10	Contributions	\$12,571.15	
	20% Liquidated Damages	\$2,514.23	
	5% p/a Interest (to 12/10/10)	\$273.81	
			\$15,359.19
6/10	Liquidated Damages	\$287.12	
	5% p/a Interest (to 12/10/10)	\$18.49	
			\$305.61
7/10	Contributions	\$6,362.26	
	20% Liquidated Damages	\$1,272.45	
	5% p/a Interest (to 12/10/10)	\$76.70	
			\$7,711.41
8/10	Contributions	\$6,224.46	
	20% Liquidated Damages	\$1,244.89	
	5% p/a Interest (to 12/10/10)	\$57.13	
			\$7,526.48
9/10	Contributions	\$11,927.72	
	20% Liquidated Damages	\$2,385.54	
	5% p/a Interest (to 12/10/10)	\$58.82	
			\$14,372.08
10/10	Contributions	\$22,395.68	
	20% Liquidated Damages	\$4,479.14	
	5% p/a Interest (to 12/10/10)	\$30.60	
			\$26,905.42
11/10	Contributions	\$17,672.93	
	20% Liquidated Damages	\$3,534.59	
			\$21,207.52
8/11	20% Liquidated Damages	\$4,746.43	
	5% p/a Interest (to 10/11/11)	\$35.76	
		\$4,782.19	\$4,782.19
	Attorney's Fees (11/10/10-10/11/11)		\$6,829.00
	SUB-TOTAL		\$105,672.26
	Credits (Previous Payments to Plaintiffs)		\$31,637.83
	TOTAL		\$74,034.43

4. Defendants shall *conditionally* pay the amount of **\$52,906.68**, representing all of the above amounts, less liquidated damages in the amount of **\$21,127.75**. *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 **October 25, 2011**, and on or before the 25th day of each month thereafter for a period of eight (8) months through and including May 25, 2012, Defendants shall pay to Plaintiffs the amount of **\$3,000.00** per month.

1 (b) Thereafter, beginning on June 25, 2012, and on or before the 25th day of
2 each month thereafter, for a period of five (5) months, through October 25, 2012, Defendants shall
3 pay to Plaintiffs the amount of **\$6,000.00** per month.

4 (c) Payments may be made by joint check, to be endorsed to Plaintiffs prior to
5 submission. Defendants shall have the right to increase the monthly payments at any time and
6 there is no penalty for prepayment.

7 (d) Payments shall be applied first to unpaid interest and then to unpaid
8 principal. The unpaid principal balance shall bear interest from October 12, 2011, at the rate of 5%
9 per annum in accordance with the Collective Bargaining Agreement and Plaintiffs' Trust
10 Agreements.

11 (e) Checks shall be made payable to the *District Council 16 Health & Welfare*
12 *Trust Fund*, and delivered on or before each due date to Blake E. Williams at Saltzman & Johnson
13 Law Corporation, 44 Montgomery Street, Suite 2110, San Francisco, California 94104, or to such
14 other address as may be specified by Plaintiffs.

15 (f) At the time that Defendants make their September 25, 2012 payment,
16 Defendants may submit a written request for waiver of liquidated damages directed to the Board
17 of Trustees, but sent to Saltzman and Johnson Law Corporation with their September 25, 2012
18 payment. Defendants will be advised as to whether or not the waiver has been granted prior to the
19 final payment hereunder. Such waiver will not be considered until and unless all other amounts
20 are paid in full and Defendants' account is current.

21 (g) Prior to the last payment pursuant to this Stipulation, Plaintiffs shall advise
22 Defendants, in writing, as to the final amount due, including interest and all additional attorneys'
23 fees and costs incurred by Plaintiffs in connection with collection and allocation of the amounts
24 owed to Plaintiffs under this Stipulation. Defendants shall pay all additional attorneys' fees and
25 costs regardless of whether or not Defendants default herein. Any additional amounts due
26 pursuant to the provisions hereunder shall also be paid in full with the October 25, 2012 stipulated
27 payment.

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

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

13 6. Beginning with contributions due for hours worked by Defendants' employees
14 during the month of September 2011, due on October 15, 2011 and delinquent if not received by
15 the Trust Funds before the last business day of the month, and for every month thereafter until this
16 Judgment is satisfied, **Defendants shall remain current in contributions** due to Plaintiffs under
17 the current Collective Bargaining Agreement and under all subsequent Collective Bargaining
18 Agreements, if any, and the Declarations of Trust as amended. Defendants shall fax a copy of its
19 contribution report for each month, together with a copy of that payment check, *to Blake E.*
20 *Williams at 415-882 9287*, prior to sending the payment to the Trust Fund office.

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

23 7. Defendants shall make full disclosure of all jobs on which they are working by
24 providing Plaintiffs with an ongoing and updated list of jobs on the form attached hereto as
25 Exhibit A. This disclosure shall include, but not be limited to, the name and address of the job, the
26 start and completion dates, and the identity of General Contractor/Owner/Developer. Within five
27 (5) days of a demand by Plaintiffs during the term of this Stipulation, Defendants shall be required

1 to additionally provide Plaintiffs with copies of all certified payroll reports on any public works
2 jobs on which Defendants are working.

3 These requirements are concurrent with, and in addition to, the requirements set forth
4 above. Defendants shall fax said updated list each month (or sooner if required elsewhere herein)
5 together with the contribution report (as required by ¶6 of this Stipulation) to *Blake E. Williams at*
6 *415-882-9287*, on before the 15th day of each month. Attached hereto as *Exhibit A* is a Job Report
7 Form which is to be completed each month.

8 8. Failure to comply with any of the above terms shall constitute a default of the
9 obligations under this Agreement and the provisions of ¶11 shall apply. Any unpaid or late paid
10 contributions, together with 20% liquidated damages and 5% per annum interest accrued on the
11 contributions, pursuant to the Trust Agreements, shall be added to and become a part of this
12 Judgment and subject to the terms herein. Plaintiffs reserve all rights available under the
13 applicable Bargaining Agreement and Declarations of Trust of the Trust Funds for collection of
14 current and future contributions, and for any additional past contributions not included herein as
15 may be determined by Plaintiffs, pursuant to employee timecards or paystubs, by audit, or other
16 means, and the provisions of this agreement are in addition thereto. Defendants specifically waive
17 the defense of the doctrine *res judicata* as to any such additional amounts determined as due.

18 9. RAOUL WESLEY FULCHER, SR. acknowledges that he is the
19 RMO/CEO/President and sole owner of the stock of MCC FLOORING CONTRACTORS, INC.,
20 and that he specifically consents to the Court’s jurisdiction as well as the use of a Magistrate Judge
21 for all proceedings herein. Mr. Fulcher (hereinafter “Guarantor”) also confirms that he is
22 personally guaranteeing the amounts due pursuant to the terms of this Stipulation and further
23 acknowledges that all affiliates, related entities and successors in interest to MCC FLOORING
24 CONTRACTORS, INC. and/or any subsequent entity wherein Mr. Fulcher is a principal, officer,
25 owner, or possesses any ownership interest shall also be bound by the terms of this Stipulation as
26 Guarantors, and also consents to this Court’s jurisdiction as well as the use of a Magistrate Judge.
27 All such entities shall specifically consent to the terms herein and to the Court’s jurisdiction, in

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1 writing at the time of any assignment, affiliation or purchase.

2 10. Prior to the last payment pursuant to this Judgment Pursuant to Stipulation,
3 Plaintiffs shall advise Defendants/Guarantor, in writing, as to the final lump sum amount due,
4 including interest and all additional attorneys' fees and costs incurred by Plaintiffs in connection
5 with collection and allocation of the amounts owed to Plaintiffs under this Stipulation as set forth
6 above. Attorneys' fees will be capped at \$100.00 per month during the payment term except as
7 detailed below. This \$100.00 per month cap on attorneys' fees shall only relate to the processing
8 and allocation of Defendants' payments, and shall not include any attorneys fees and costs
9 incurred by the Trusts Funds which are unrelated to the payment of the amounts due by
10 Defendants as detailed above. This includes, but is not limited to, the preparation and issuance of
11 Current Status Letters, or communications with Defendants regarding the status of payments.
12 However, in the event of any default, failure to make a timely payment as provided in this
13 Stipulation, or failure to timely comply with any of the obligations included in this Stipulation,
14 Defendant shall pay all attorneys' fees and costs incurred in this matter without limitation. Said
15 amount shall be paid with the last payment, upon demand by Plaintiffs. Any additional amounts
16 due pursuant to the provisions hereunder shall also be paid in full with the October 25, 2012
17 stipulated payment.

18 11. In the event that Defendants/Guarantor fail to make any payment required under ¶4
19 above, or otherwise default on their obligations as detailed in this Stipulation, and such default is
20 not timely cured, the following will occur:

21 (a) The entire balance of **\$74,034.43**, as specified in ¶3, plus interest, but
22 reduced by principal payments received from Defendants/Guarantor, in addition to any unpaid
23 contributions then due plus 20% liquidated damages and 5% per annum interest on the unpaid or
24 late paid contributions, shall be immediately due and payable, together with any attorneys' fees
25 and costs incurred during the term of this Stipulation;

26 (b) A Writ of Execution may be obtained against Defendants/Guarantor without
27 further notice to Defendants/Guarantor, in the amount of the unpaid balance plus any additional

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1 amounts due under the terms herein. Such Writ of Execution may be obtained solely upon
2 declaration by a duly authorized representative of the Plaintiffs setting forth any payment
3 theretofore made by or on behalf of Defendants/Guarantor and the balance due and owing as of the
4 date of default.

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

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

13 12. Any failure on the part of the Plaintiffs to take any action against
14 Defendants/Guarantor as provided herein in the event of any breach of the provisions of this
15 Stipulation shall not be deemed a waiver of any subsequent breach by the Defendants/Guarantor of
16 any provisions herein.

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

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

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

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

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

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

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EXHIBIT A

JUDGMENT PURSUANT TO STIPULATION

JOB REPORT FORM

***** Updated report must be faxed to Blake E. Williams, Esq., at (415) 882-9287
on the 15th day of each month *****

Employer Name: MCC FLOORING CONTRACTORS, INC.

Report for the month of _____ Submitted by: _____

Project Name:			
Project Address:			
General Contractor:			
General Contractor Address/Tel. #:			
Contract #:		Date of Contract:	
Total Value of Contract:			
Work Start Date:		Work Completion Date:	

Project Name:			
Project Address:			
General Contractor:			
General Contractor Address/Tel. #:			
Contract #:		Date of Contract:	
Total Value of Contract:			
Work Start Date:		Work Completion Date:	

Project Name:			
Project Address:			
General Contractor:			
General Contractor Address/Tel. #:			
Contract #:		Date of Contract:	
Total Value of Contract:			
Work Start Date:		Work Completion Date:	

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