

1 RICHARD C. JOHNSON (SBN 40881)
 2 SHAAMINI A. BABU (SBN 230704)
 3 JULIE A. OSTIL (SBN 215202)
 4 SALTZMAN & JOHNSON LAW CORPORATION
 5 44 Montgomery Street, Suite 2110
 6 San Francisco, CA 94104
 (415) 882-7900
 (415) 882-9287 – Facsimile
 djohnson@sjlawcorp.com
 sbabu@sjlawcorp.com
 jostil@sjlawcorp.com

7 Attorneys for Plaintiffs

8 UNITED STATES DISTRICT COURT

9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 PENSION TRUST FUND FOR OPERATING
 11 ENGINEERS; F.G. CROSTHWAITE and
 12 RUSSELL E. BURNS, as Trustees,

Case No.: C 12-03306 DMR

STIPULATION FOR ENTRY OF JUDGMENT; JUDGMENT

12 Plaintiffs,

13 vs.

14 D P CRUSHING, INC., aka DP CRUSHING,
 15 INC., a California Corporation; and DOES 1-
 16 20,

17 Defendant.

18 IT IS HEREBY STIPULATED by and between Plaintiffs Pension Trust Fund for
 19 Operating Engineers, F.G. Crosthwaite and Russell E. Burns, as Trustees (collectively “Plaintiffs”
 20 or “Plan”), and Defendant D P Crushing, Inc., aka DP Crushing, Inc., a California Corporation
 21 (“Defendant” or “D P Crushing, Inc.”) as follows:

22 1. D P Crushing, Inc. was signatory to a collective bargaining agreement (“Bargaining
 23 Agreement”) with the Operating Engineers Local Union No. 3 (“Union”) pursuant to which D P
 24 Crushing, Inc. was required to make contributions to the Plan for all hours worked by its covered
 25 employees within the jurisdiction of the Bargaining Agreement.

26 2. On or about February 1, 2009, D P Crushing, Inc. made a complete withdrawal
 27 from the Plan. Thereafter, D P Crushing, Inc. was dissolved. As a result of the withdrawal, it is
 28 the contention of the Plan that D P Crushing, Inc. became subject to withdrawal liability under

1 ERISA §4203(a) (29 U.S.C. §1383(a)). The Plan assessed withdrawal liability against D P
2 Crushing, Inc. in the amount of \$12,252.00 on November 30, 2011.

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4 3. Defendant D P Crushing, Inc. hereby agrees to a judgment entered against it and in
5 favor of Plaintiffs in the sum \$23,098.42 calculated as follows:

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	Amount	Authority
7 Assessed Withdrawal Liability	\$ 12,252.00	ERISA §4203(a)
8 10% Interest 1/1/12 – 10/10/12	\$ 947.52	ERISA §502(g)(2)(B)
9 20% Liquidated Damages	\$ 2,450.40	ERISA §502(g)(2)(C)(ii)
10 Attorneys’ Fees 8/16/11 – 10/09/12	\$ 4,790.50	ERISA §502(g)(2)(D)
11 Costs – 9/23/11 – 10/09/12	\$ 2,658.00	
TOTAL	\$ 23,098.42	

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13 4. The undersigned parties acknowledge and agree that nothing contained herein shall
14 be considered a waiver of any claims, rights, and/or remedies that Plaintiffs may have against
15 others as allowed by law.

16 5. In the event of the filing of a bankruptcy petition by Defendant, the parties agree
17 that any payments made under this Judgment shall be deemed to have been made in the ordinary
18 course of business as provided under 11 U.S.C. §547(c)(2) and shall not be claimed by Defendant
19 as a preference under 11 U.S.C. §547 or otherwise. Defendant nevertheless represents that no
20 bankruptcy filing is anticipated.

21 6. Any failure on the part of the Plaintiffs to take action against Defendant under this
22 Judgment in the event of any breach by Defendant of any provisions herein shall not be deemed a
23 waiver of any remedies and rights available to the Plaintiffs under this Judgment in connection
24 with any subsequent breach by Defendant of any provisions herein.

25 7. Checks for payments under this Judgment shall be made payable to the “Pension
26 Plan for Operating Engineers Pension Trust Fund” and delivered to Julie A. Ostil, Saltzman &
27 Johnson, 44 Montgomery Street, Suite 2110, San Francisco, California, 94104, or to such other
28 address as may be specified by the Plan. However, it is understood by all parties that Defendant

1 currently does not have the financial capacity to pay for all or part of the judgment, and that
2 Defendant is a dissolved California corporation.

3 8. Should any provision of this Judgment be declared or determined by any court of
4 competent jurisdiction to be illegal, invalid, or unenforceable, the legality, validity, and
5 enforceability of the remaining parts, terms or provisions shall not be affected thereby and any
6 such illegal, unenforceable or invalid part, term, or provision shall be deemed not to be part of this
7 Judgment.

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

11 10. The persons executing this Judgment represent and warrant that they have the
12 authority to enter into this Judgment on behalf of the parties hereto.

13 11. This Judgment may be executed in any number of counterparts and by facsimile,
14 each of which shall be deemed an original and all of which shall constitute together one and the
15 same instrument.

16 12. The parties request that the Court retain jurisdiction over the parties and this matter
17 until such time as the Judgment is satisfied in full.

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PLAINTIFFS:

Pension Trust Fund for Operating Engineers

By: /s/ Russell E. Burns
Russell E. Burns, Co-Chairman

Dated: November 6, 2012.

By: /s/ F. G. Crosthwaite
F.G. Crosthwaite, Co-Chairman

Dated: November 7, 2012.

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DEFENDANTS:

Dated: November 5, 2012

D P CRUSHING INC., aka DP CRUSHING, INC., a California corporation

By: /s/ David Arthur Pile
David Arthur Pile, President

APPROVED AS TO FORM:

ATTORNEYS FOR PLAINTIFFS:

Dated: November 6, 2012

Saltzman & Johnson Law Corporation

By: /s/ Julie A. Ostil
Julie A. Ostil
Attorneys for Plaintiffs

ATTORNEYS FOR DEFENDANT:

Dated: November 5, 2012

Magarian Law LLP

By: /s/ Krista L. DiMercurio
Krista L. DiMercurio
Attorneys for Defendant

ORDER

IT IS SO ORDERED.

Judgment is hereby entered under the terms described above. This Court shall retain jurisdiction of this matter until the judgment is satisfied.

Dated: Nov. 8, 2012

Honorable Donna M. Ryu
UNITED STATES MAGISTRATE JUDGE

