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6 Attorneys for Plaintiffs

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

10 BRICKLAYERS LOCAL NO. 3 PENSION
 TRUST and its Board of Trustees; JEFF
 11 BARBER and DAVID JACKSON, Trustees, et
 al.;

Case No.: C13-5896 CW

**JUDGMENT PURSUANT TO
 STIPULATION; ORDER THEREON**

12 Plaintiffs,

13 v.

14 PETE WISMANN MASONRY, INC., a
 15 California Corporation,

16 Defendant.

17 IT IS HEREBY STIPULATED by and between the parties hereto, that Judgment shall be
 18 entered in the within action in favor of the Plaintiffs Bricklayers Local No. 3 Pension Trust, et al.
 19 (collectively “Plaintiffs” or “Trust Funds”) and against Defendant Pete Wismann Masonry, Inc., a
 20 California Corporation, and/or alter egos and/or successor entities, as follows:

- 21 1. Defendant entered into valid Collective Bargaining Agreements with the Northern
 22 California Marble Mason Contractors Multi-Employer Bargaining Association and Masonry
 23 Contractors’ Association of Central California and the Bricklayers Local Union #3 of California,
 24 IUBAC, AFL-CIO, and the Marble Masons and Marble Finishers by and between Marble Dealers
 25 of Northern California and Independent Marble Contractors, and Bricklayers and Allied
 26 Craftworkers Local Union 3 CA. IUBAC, AFL-CIO (collectively, “Bargaining Agreements”).
 27 These Bargaining Agreements have continued in full force and effect to the present time.
 28

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

1/1/10 – 9/30/13	Contribution Underpayments on audit:	\$33,721.26	
	20% Liquidated Damages:	\$6,744.25	
	10% Interest:		
	▪ Through 11/14/13, per audit	\$11,537.14	
	Audit Fees	\$2,025.00	
		Subtotal:	\$54,027.65
	Attorneys' Fees (through 1/10/14):	\$1,598.00	
	Filing Fee and Costs of Service:	\$492.15	
		Subtotal:	\$2,090.15
	GRAND TOTAL:		\$56,117.80

3. Defendant shall *conditionally* pay the amount of **\$49,373.55**, representing all of the above amounts, **less liquidated damages in the amount of \$6,744.25**. *This waiver is expressly conditioned upon the Trustees' approval following timely compliance with all of the terms of this Stipulation*, as follows:

(a) Beginning on or before March 1, 2014, and on or before the 1st day of each month thereafter, for a period of twelve (12) months, through and including February 1, 2015, Defendant shall pay to Plaintiffs a minimum of **\$5,000.00** per month;

(b) Any payments made by a general contractor's joint check to Defendant and Plaintiff Trust Funds shall be endorsed by Defendant prior to submission to Plaintiffs;

(c) Defendant shall have the right to increase the monthly payments at any time, without penalty;

(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 10% per annum, from January 10, 2014, in accordance with Plaintiffs' Trust Agreements;

(e) Payments shall be made payable to the "B.A.C. Local 3 Trust Funds" and delivered to Muriel B. Kaplan at Saltzman & Johnson Law Corporation, 44 Montgomery Street, Suite 2110, San Francisco, California 94104, or to such other address as may be specified by Plaintiffs, **to be received on or before the 1st day of each month**.

(f) Defendant shall pay all additional costs and attorneys' fees incurred by Plaintiffs, following those included in ¶3 herein, in connection with collection and allocation of the

1 amounts owed by Defendant to Plaintiffs under this Stipulation, regardless of whether or not there is
2 a default herein.

3 (g) Prior to February 1, 2015, the deadline for Defendant’s last monthly payment
4 toward the conditional balance owed under the Stipulation, Plaintiffs shall notify Defendant in
5 writing of the final amount due, including any additional interest and attorneys’ fees and costs, as
6 well as any other amounts due under the terms herein. Any additional amounts due pursuant to the
7 provisions hereunder shall be paid in full with the final conditional stipulated payment.

8 (h) Following Defendant’s payment of the last conditional monthly payment
9 under the Stipulation, Defendant will be advised as to whether or not the waiver has been granted
10 by the Board of Trustees. If the waiver is granted, upon bank clearance of Defendant’s last payment
11 of the conditional balance and confirmation that Defendants’ account is otherwise current, Plaintiffs
12 will file a Notice of Satisfaction of Judgment with the Court. However, if the waiver is denied,
13 monthly payments will continue as provided in (a) above, until all liquidated damages due have
14 been paid. All terms herein shall continue to apply until all payments are satisfied.

15 (i) Failure to comply with any of the above terms shall constitute a default of
16 Defendant’s obligations under this Stipulation and the provisions of ¶13 shall apply.

17 5. Lawrence William Wismann acknowledges that he is authorized to enter this
18 Stipulation on behalf of Defendant Pete Wismann Masonry, Inc. Lawrence William Wismann,
19 Cecilia Ann Hooton, Mitchell Drew Johnson, James Patrick Wismann, and Mary Therese Wismann
20 (hereinafter referred to as “Guarantors”) confirm that they are personally guaranteeing the amounts
21 due pursuant to the terms of this Stipulation and further acknowledge that all affiliates, related
22 entities, purchasers, and successors in interest to Pete Wismann Masonry, Inc. shall also be bound
23 by the terms of this Stipulation as Guarantors, and also consent to this Court’s jurisdiction.

24 6. Beginning with contributions due for hours worked by Defendant’s employees
25 during the month of January 2014, which are due on February 15, 2014 and delinquent if not
26 received by that date, and for every month thereafter, Defendant/Guarantors **shall remain current**
27 **in reporting and payment of any contributions** due to Plaintiffs under the current Collective
28 Bargaining Agreement and under all subsequent Collective Bargaining Agreements, if any, and the

1 Declarations of Trust as amended. **Defendant shall timely submit a copy of all contribution**
2 **reports for each month, together with a copy of the payment check(s), by facsimile or email to**
3 **Muriel Kaplan at 415-882-9287, or by email to both mkaplan@sjlawcorp.com and**
4 **mvalentine@sjlawcorp.com or to such other fax number or email address as may be specified**
5 **by Plaintiffs, concurrent with sending the payment to the Trust Fund office.** Failure by
6 Defendant to timely submit copies of current contribution reports and payments to Muriel Kaplan as
7 described above shall constitute a default of the obligations under this agreement.

8 7. Defendant shall make full disclosure of all jobs on which it is working by providing
9 Plaintiffs with a monthly job report on the form attached hereto as *Exhibit A*, including, but not
10 limited to, the name and address of job, general contractor information, certified payroll if a public
11 works job, start date and anticipated completion date, of each job. **Defendant shall submit said**
12 **updated list each month by the last day of the month (as stated in above ¶6, by fax or email).**
13 This requirement remains in full force and effect regardless of whether or not Defendant has
14 ongoing work. In this event, Defendant shall submit a statement stating that there are no current
15 jobs. To the extent that Defendant is working on a Public Works job, or any other job for which
16 Certified Payroll Reports are required, copies of those Reports shall also be submitted to Muriel
17 Kaplan, concurrently with the monthly job reports. Failure by Defendant to timely submit updated
18 monthly job reports shall constitute a default of the obligations under this agreement. This
19 obligation remains in full force and effect under this Stipulation so long as Defendant is in business,
20 and work is being performed.

21 8. Failure by Defendant/Guarantors to remain current in reporting or payment of
22 monthly contributions owed shall constitute a default of the obligations under this agreement. Any
23 such unpaid or late paid contributions, together with 20% liquidated damages and 10% per annum
24 interest accrued on contributions, shall be added to and become a part of this Judgment and subject
25 to the terms herein. Plaintiffs reserve all rights available under the applicable Bargaining Agreement
26 and Declarations of Trust of the Trust Funds for collection of current and future contributions, and
27 for any additional past contributions not included herein as may be determined by Plaintiffs,
28 pursuant to employee timecards or paystubs, by audit, or other means, and the provisions of this

1 agreement are in addition thereto. Defendant/Guarantors specifically waive the defense of the
2 doctrine *res judicata* as to any such additional amounts determined as due.

3 9. Should the Trust Funds request a further audit of Defendant's payroll records in
4 order to confirm proper reporting and payment of contributions pursuant to the Bargaining
5 Agreement, any failure by Defendant to comply with said request or payment thereof shall
6 constitute a default of the obligations under this Agreement.

7 10. In the event that any check is not timely submitted, is submitted by
8 Defendant/Guarantors but fails to clear the bank, or is unable to be negotiated for any reason for
9 which Defendant/Guarantors is responsible, this shall be considered to be a default on the Judgment
10 entered. If Defendant/Guarantors fail to submit their contribution reports, and/or certified payroll
11 reports (if any) and/or job lists, and/or fails to comply with *any* of the terms of the Stipulation
12 herein, this too shall constitute a default.

13 11. Defendant and Guarantors and any additional entities in which Guarantors or any
14 one of them is an officer, owner or possesses any ownership interest, including all successors in
15 interest, assignees, and affiliated entities (including, but not limited to parent or other controlling
16 companies), and any companies with which Pete Wismann Masonry, Inc. joins or merges, if any,
17 shall also be bound by the terms of this Stipulation. Defendant/Guarantors and all such entities
18 specifically consent to the Court's jurisdiction, which shall be specified in writing at the time of any
19 assignment, affiliation or purchase of Defendant, along with the obligations to the terms herein.

20 12. If a default occurs, Plaintiffs shall make a written demand, sent to
21 Defendant/Guarantors by facsimile to (650) 969-6354 and by regular mail, to cure said default
22 within seven (7) days of the date of the notice from Plaintiffs. If Defendant or Guarantors elect to
23 cure said default, and Plaintiffs elect to accept future payments, all such payments shall be made by
24 cashier's check if the default is caused by a failed check.

25 13. In the event the default is not cured, all amounts remaining due hereunder, as well as
26 any additional amounts due pursuant to the terms herein, shall be due and payable on demand by
27 Plaintiffs as follows:

28 (a) The entire amount of \$56,117.80 plus interest, reduced by principal payments

1 received by Plaintiffs, but increased by any unpaid contributions then due, including audit findings,
2 if any, plus 20% liquidated damages and 10% per annum interest, together with any additional
3 attorneys' fees and costs incurred;

4 (b) A Writ of Execution may be obtained against Defendant and Guarantors and
5 all related entities without further notice, in the amount of the unpaid balance, plus any additional
6 amounts due under the terms herein. The declaration of a duly authorized representative of the
7 Plaintiffs setting forth any payment theretofore made by or on behalf of Defendant/Guarantors, and
8 the balance due and owing as of the date of default, shall be sufficient to secure the issuance of a
9 Writ of Execution;

10 (c) Defendant and Guarantors waive notice of entry of judgment and expressly
11 waive all rights to stay of execution and appeal.

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

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

22 16. 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 17. This Stipulation is limited to the agreement between the parties with respect to the
28 delinquent contributions and related sums enumerated herein, owed by Defendant or Guarantors to

1 the Plaintiffs. This Stipulation does not in any manner relate to withdrawal liability claims, if any.
2 Defendant and Guarantors acknowledge that the Plaintiffs expressly reserve their right to pursue
3 withdrawal liability claims, if any, against Defendant and/or Guarantors as provided by the
4 Plaintiffs' Plan Documents, the Trust Agreements incorporated into the Collective Bargaining
5 Agreement, and the law.

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

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

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

13 All parties and the Guarantors represent and warrant that they have had the opportunity to be
14 or have been represented by counsel of their own choosing in connection with entering this
15 Stipulation under the terms and conditions set forth herein, that they have read this Stipulation with
16 care and are fully aware of and represent that they enters into this Stipulation voluntarily and
17 without duress.

18 Dated: **PETE WISMANN MASONRY, INC., a
California corporation**

19 By: _____
20 LAWRENCE WILLIAM WISMANN
its RMO

21 Dated: **LAWRENCE WILLIAM WISMANN,
Guarantor**

22 By: _____
23 LAWRENCE WILLIAM WISMANN

24 Dated: **CECILIA ANN HOOTON, Guarantor**

25 By: _____
26 CECILIA ANN HOOTON

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Dated:

MITCHELL DREW JOHNSON, Guarantor

By:

MITCHELL DREW JOHNSON

Dated:

JAMES PATRICK WISMANN, Guarantor

By:

JAMES PATRICK WISMANN

Dated:

MARY THERESE WISMANN, Guarantor

By:

MARY THERESE WISMANN

Dated: March ____, 2014

**SALTZMAN & JOHNSON LAW
CORPORATION**

By:

MURIEL B. KAPLAN
Attorneys for Plaintiffs

IT IS SO ORDERED.

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

Dated: _____ March 31, 2014

By:  _____
UNITED STATES DISTRICT COURT JUDGE

Exhibit A
JOB REPORT FORM

*** Updated report must be faxed to Muriel Kaplan, Esq., at (415) 882-9287, or emailed to mkaplan@sjlawcorp.com and mvalentine@sjlawcorp.com on or before the last business day of each month ***

Employer Name: **PETE WISMANN MASONRY, INC.**

Report for the month of _____, 2014__ Submitted by (name): _____

Please spell out project, owner and general contractor names, and complete all fields

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

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PROOF OF SERVICE

1. I am a citizen of the United States and am employed in the County of San Francisco, State of California. My business address is 44 Montgomery Street, Suite 2110, San Francisco, California 94104.

2. I am over the age of eighteen and not a party to this action.

3. On **March 27, 2014**, I served the following document(s):

JUDGMENT PURSUANT TO STIPULATION; [PROPOSED] ORDER THEREON

on the interested parties in said action by enclosing a true and exact copy of each document in a sealed envelope and placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with First Class postage fully prepaid.

4. The envelope was addressed and mailed as follows:

Lawrence William Wismann
Cecilia Ann Hooton
Mitchell Drew Johnson
James Patrick Wismann
Mary Therese Wismann
Pete Wismann Masonry, Inc.
2550 Wyandotte, #E
Mountain View, CA 94043

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on **March 27, 2014**, at San Francisco, California.

_____/S/
Michelle Valentine, Paralegal