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7 Attorneys for Plaintiffs, District Council 16 Northern
 8 California Health and Welfare Trust Fund, et al.

9 UNITED STATES DISTRICT COURT
 10 NORTHERN DISTRICT OF CALIFORNIA

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

14 Plaintiffs,

15 v.

16 MOLINA’S PAINTING & WALLCOVERING, INC.,
 17 a California corporation; and OSCAR MOLINA, an
 18 individual,

19 Defendants.

Case No.: 4:17-CV-00370-YGR

**ORDER ENTERING
 AMENDED JUDGMENT
 PURSUANT TO STIPULATION;
~~[PROPOSED] ORDER THEREON~~**

20
 21 IT IS HEREBY STIPULATED and AGREED (the “Stipulation”) by and between the parties
 22 hereto, an Amended Judgment shall be entered in the within action in favor of Plaintiffs District Council
 23 16 Northern California Health and Welfare Trust Fund, et al. (“Plaintiffs” or “Trust Funds”) and against
 24 Defendant, Molina’s Painting & Wallcovering, Inc., a California corporation, and Defendant Oscar
 25 Molina, an individual (collectively “Defendants”), as follows:

26 1. Plaintiffs and Defendants entered into a Judgment Pursuant to Stipulation which was
 27 entered by this Court on February 17, 2017. [Dkt. #12]. The Judgment Pursuant to Stipulation (“Original
 28 Judgment”) provided a payment plan for amounts owed to the Plaintiffs from Defendants.

1 2. Defendants made payments as required under the Original Judgment, but additional
 2 amounts have come due. The Parties have now agreed to enter into an Amended Stipulated Judgment for
 3 the amounts remaining due in this action.

4 3. Defendant Molina’s Painting & Wallcovering, Inc. (“Molina’s Painting”) is signatory to
 5 and bound by the terms of a Collective Bargaining Agreement(s) (“Bargaining Agreement”) with
 6 District Council No. 16 of the International Union of Painters and Allied Trades (“Union”). The
 7 Bargaining Agreement is still in full force and effect.

8 4. Oscar Molina confirms that he is the RMO / CEO / President of Defendant Molina’s
 9 Painting and is authorized to enter into this Stipulation on behalf of Molina’s Painting.

10 5. Oscar Molina (“Guarantor”) also confirms that he is personally guaranteeing the amounts
 11 due herein. Defendants Molina’s Painting and Oscar Molina (collectively “Defendants”) specifically
 12 consent to the Court’s jurisdiction, as well as to the use of a Magistrate Judge for all proceedings,
 13 including entry of judgment herein. Defendants further confirm that all successors in interest, assignees,
 14 and affiliated entities (including, but not limited to, parent or other controlling companies), and any
 15 companies with which Defendant Molina’s Painting joins or merges, if any, shall also be bound by the
 16 terms of this Stipulation as Guarantors. This shall include any additional entities in which Guarantor is
 17 an officer, owner or possesses any controlling ownership interest. All such entities shall specifically
 18 consent to the Court’s jurisdiction, the use of a Magistrate Judge for all proceedings, and all other terms
 19 herein, in writing, at the time of any assignment, affiliation or purchase.

20 6. Defendants are currently indebted to the Trust Funds as follows:

| Work Month | Unpaid Contributions | 20% Liquidated Damages | 5% Interest | Subtotals |
|---|---|-------------------------------|--------------------|--------------------|
| August 2019 | \$0.00 | \$28,489.41 | \$0.00 | \$28,489.41 |
| September 2019 | \$0.00 | \$50,081.85 | \$0.00 | \$50,081.85 |
| Subtotals: | \$0.00 | \$78,571.26 | \$0.00 | \$78,571.26 |
| Audit (5/1/16-9/30/19) | Contribution Underpayments: | | | \$19,838.91 |
| | 20% Liquidated Damages: | | | \$3,967.78 |
| | 5% Interest (through 4/30/19): | | | \$2,327.40 |
| | Additional 5% Interest Owed (5/1/19-11/30/20): | | | \$1,577.60 |
| Subtotal (Audit 5/1/16-9/30/19): | | | | \$27,711.69 |
| Attorneys’ Fees (2/4/17-11/30/20): | | | | \$11,763.00 |

| Work Month | Unpaid Contributions | 20% Liquidated Damages | 5% Interest | Subtotals |
|------------|----------------------|--------------------------|-------------|---------------------|
| | | Costs (2/4/17-11/30/20): | | \$20.00 |
| | | Grand Total: | | \$118,065.95 |

REQUIREMENTS UNDER THE TERMS OF THIS STIPULATION

5. **Notice requirements** pursuant to the terms of this Stipulation are as follows:

- a) Notices to Defendants: Oscar Molina, 510 Westaire Blvd., Martinez, CA 94553; email: molinasptg@sbcglobal.net
- b) Notices to Plaintiffs: Ana Hallmon, Saltzman & Johnson Law Corporation, 1141 Harbor Bay Parkway, Suite 100, Alameda, CA 94502; email: ahallmon@sjlawcorp.com , copy to compliance@sjlawcorp.com.

6. The requirements pursuant to the terms of this Stipulation are as follows:

a) **Monthly Payments**: Defendants shall pay the amount of **\$114,098.17** representing all of the above amounts, less liquidated damages totaling \$3,967.78, which is conditionally waived provided that Defendants timely make all monthly payments pursuant to the terms of this Amended Judgment.

i) Payments in the amount of **\$5,005.65 per month** shall begin on December 15, 2020, and continue on or before the 15th (fifteenth) day of each month thereafter **for a period of twenty-four (24) months**. Plaintiffs may require that Defendants pay electronically by ACH/wire transfer, or by cashier’s check.

ii) Defendants shall have the right to increase the monthly payments at any time and there is no penalty for prepayment.

iii) Payments shall be applied first to interest, at the rate of 5% per annum in accordance with the Bargaining Agreement(s) and Trust Agreements. Interest shall begin to accrue on December 1, 2020.

b) **Contributions**: Beginning with contributions due for hours worked by Defendants’ employees during the month of November 2020, and for every month thereafter until this Judgment is satisfied, Defendants shall remain current in reporting and payment of contributions due to Plaintiffs under the terms of the Collective Bargaining Agreement(s). Defendants are required to enroll

1 in iRemit, the online platform for reporting and payment of contributions to the Plaintiff Trust Funds
2 and to submit all monthly contribution reports and payments electronically through iRemit. Defendants
3 are to contact DC16iremit@hsba.com to set up online reporting and payment.

4 c) **Job Report:** Beginning with the month of November 2020, and for every month
5 thereafter, Defendants shall fully disclose all jobs on which they are working by providing Plaintiffs
6 with fully completed job reports on the form attached hereto as *Exhibit A*. Upon request by Plaintiffs,
7 Defendants shall also provide Plaintiffs with copies of Certified Payroll Reports.

8 d) **Audit:** Should the Trust Funds request an audit of Defendants' payroll records
9 pursuant to the requirements of the Bargaining Agreement(s) and/or Trust Agreements, Defendants must
10 contact the auditor within seven days of receiving notice, and must schedule the audit.

11 i) In the event that amounts are found due to Plaintiffs as a result of the
12 audit, Plaintiffs shall send a copy of the audit report and written demand for payment to Defendants. In
13 the event that the audit findings are not contested, payment in full shall be delivered to Ana Hallmon at
14 the address provided above.

15 ii) In the event that Defendants dispute the audit findings, Defendants must
16 provide the dispute in writing, with all supporting documentation, within ten days of the date of the
17 demand. Defendants shall be notified as to whether revisions will be made to the audit. If revisions are
18 not made, payment will be immediately due. If revisions are made, payment in full of the revised
19 amount shall be immediately due.

20 iii) If Defendants are unable to make payment in full, Defendants may submit
21 a request to add the amounts found due to this Stipulation. If the Stipulation is so revised, Defendants
22 shall execute the Amended Judgment within ten days of receipt. Failure to execute the revised
23 agreement shall constitute a default of the terms herein.

24 iv) Failure by Defendants to submit either payment in full or a request to add
25 the amounts due to this Judgment within ten days of receipt shall constitute a default of the obligations
26 under this agreement. All amounts found due on audit shall immediately become part of this Judgment.

27 e) **Fees:** Defendants shall pay all additional attorneys' fees and costs incurred
28 through Satisfaction of Judgment, whether or not a default occurs.

7. In summary, Defendants shall deliver the following payments and documents to Plaintiffs, at the following locations, on or before the following delivery deadlines, until this Stipulation has been fully satisfied:

| <u>Required Submissions</u> | <u>Delivery deadlines</u> | <u>Delivery locations</u> |
|--|--|---|
| Stipulated payments in the amount of \$5,005.65 payable to <i>District Council 16 Northern California Trust Funds</i> | 15 th day of each month (12/15/20-11/15/22) | Ana Hallmon Saltzman & Johnson Law Corp. 1141 Harbor Bay Parkway, #100 Alameda, CA 94502 |
| Current contribution reports and payments payable to <i>District Council 16 Northern California Trust Funds</i> | 15 th day of each month (beginning 12/15/20, for 11/20 hours) | Electronically via iRemit Plus copies to: compliance@sjlawcorp.com (subject: "Molina's Painting") |
| Completed job reports (form attached as Exhibit A to Stipulation) and Certified Payroll (if requested) | 15 th day of each month (beginning 12/15/20, for 11/20 hours) | compliance@sjlawcorp.com (subject: "Molina's Painting") or Ana Hallmon Saltzman & Johnson Law Corp. 1141 Harbor Bay Parkway, #100 Alameda, CA 94502 |

8. Failure to comply with any of the above terms, including submitting a payment that does not clear the bank, or failing to endorse a joint check provided for the payment of amounts due under the terms of this Stipulation including current contributions, shall constitute a default of the obligations under this Stipulation.

DEFAULTS UNDER THE TERMS OF THIS STIPULATION

9. If default occurs, Plaintiffs shall make a written demand to Defendants to cure said default *within seven (7) days of the date of the notice from Plaintiffs*. In the event default is not cured within the required time frame, all amounts remaining due hereunder (after application of principal payments made, if any) shall be due and payable on demand by Plaintiffs. These amounts shall include any conditionally waived liquidated damages, and additional attorney's fees and costs incurred herein.

10. Any unpaid or late-paid contributions, together with 20% liquidated damages and 5% per annum interest, shall become part of this Judgment. Plaintiffs reserve all rights available to collect any contributions and related amounts not included herein. This includes, but is not limited to, any amounts due pursuant to employee timecards or paystubs, by audit, or other means. Should Defendants fail to

1 submit a report for any month, contributions shall be estimated pursuant to Trust Fund policy.
2 Defendants specifically waive the defense of the doctrine *res judicata* as to any such additional amounts
3 determined as due.

4 11. A Writ of Execution may be obtained without further notice, in the amount of the unpaid
5 balance plus any additional amounts due under the terms herein. Such Writ of Execution may be
6 obtained solely upon declaration by a duly authorized representative of Plaintiffs setting forth the
7 balance due as of the date of default.

8 **MISCELLANEOUS PROVISIONS**

9 12. The above requirements remain in full force and effect regardless of whether or not
10 Defendant Molina’s Painting & Wallcovering, Inc. has ongoing work, whether Defendant Molina’s
11 Painting’s account with the Trust Funds is active, or whether Defendant Molina’s Painting &
12 Wallcovering, Inc. is signatory to a Collective Bargaining Agreement with the Union. If, for any reason,
13 Defendant Molina’s Painting & Wallcovering, Inc. has no work to report during a given month,
14 Defendant Molina’s Painting & Wallcovering, Inc. shall submit the job report form (Exhibit A attached
15 hereto) indicating that there are no current jobs. If Defendant Molina’s Painting & Wallcovering, Inc.
16 has no contributions to report, Defendant Molina’s Painting & Wallcovering, Inc. shall submit the
17 applicable contribution report stating “no employees.”

18 13. Payments made by joint check shall be endorsed on behalf of Defendants prior to
19 submission, and may be applied toward Defendants’ monthly stipulated payment, provided that the
20 issuer of the joint check is not requesting a release in exchange for the payment. Joint checks for which a
21 release is requested may not be applied toward Defendants’ monthly stipulated payment, but shall be
22 deducted from the total balance owed under this Stipulation, provided the payment is for contributions
23 included in this Stipulation.

24 14. Prior to the last payment pursuant to this Stipulation, Plaintiffs shall advise Defendants as
25 to the final amount due, including additional interest, any current contributions and related amounts, and
26 all additional attorneys’ fees and costs incurred by Plaintiffs, whether or not Defendants default herein.
27 Any additional amounts due shall be paid in full with the final stipulated payment due on November 15,
28 2022.

1 15. Defendants waive any notice of Entry of Judgment or of any Request for a Writ of
2 Execution, and expressly waive all rights to stay of execution and appeal.

3 16. Any failure on the part of Plaintiffs to take any action as provided herein in the event of
4 any breach of the provisions of this Stipulation shall not be deemed a waiver of any subsequent breach.

5 17. The parties agree that any payments made pursuant to the terms of this Judgment shall be
6 deemed to have been made in the ordinary course of business as provided under 11 U.S.C. Section
7 547(c)(2) and shall not be claimed by Defendants as a preference under 11 U.S.C. Section 547 or
8 otherwise.

9 18. Should any provisions of this Stipulation be declared or determined by any court of
10 competent jurisdiction to be illegal, invalid, or unenforceable, the legality, validity, and enforceability of
11 the remaining parts, terms or provisions shall not be affected thereby and said illegal, unenforceable or
12 invalid part, term, or provisions shall be deemed not to be part of this Stipulation.

13 19. This Stipulation is limited to the agreement between the parties with respect to the unpaid
14 and delinquent contributions and related sums enumerated herein, owed by Defendants to Plaintiffs.
15 This Stipulation does not in any manner relate to withdrawal liability claims, if any. Defendants
16 acknowledge that Plaintiffs expressly reserve their right to pursue withdrawal liability claims, if any,
17 against Defendants and control group members, as provided by Plaintiffs' Plan documents, Trust
18 Agreements incorporated into their Bargaining Agreements, and applicable laws and regulations.

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

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

24 22. Defendants represent and warrant that they have had the opportunity to be or have been
25 represented by counsel of their own choosing in connection with entering this Stipulation under the
26 terms and conditions set forth herein, that they have read this Stipulation with care and are fully aware
27 of and represent that they enter into this Stipulation voluntarily and without duress.

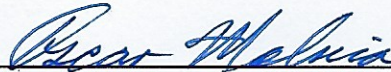
28 //

1 23. The parties agree that the Court shall retain jurisdiction of this matter until this Judgment
2 is satisfied.

3 DATED: December , 2020

**MOLINA'S PAINTING &
WALLCOVERING, INC.**

5 By:

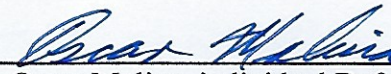


6 Oscar Molina

7 DATED: December , 2020

OSCAR MOLINA

9 By:



10 Oscar Molina, individual Defendant and
Guarantor

11 DATED: December , 2020

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

14 By:

15 Robert Williams
Trustee of Plaintiff Trust Funds

17 DATED: December , 2020

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

20 By:

21 Jeannie Simpelo
Trustee of Plaintiff Trust Funds

22 **IT IS SO ORDERED.**

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

26 DATED: December __, 2020

27 _____
UNITED STATES DISTRICT JUDGE

1 23. The parties agree that the Court shall retain jurisdiction of this matter until this Judgment
2 is satisfied.

3 DATED: December , 2020

**MOLINA'S PAINTING &
WALLCOVERING, INC.**

5 By:

6 _____
Oscar Molina

7 DATED: December , 2020

OSCAR MOLINA

9 By:

10 _____
Oscar Molina, individual Defendant and
Guarantor

11 DATED: December ⁴, 2020

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

14 By:

15 _____
Robert Williams
Trustee of Plaintiff Trust Funds

17 DATED: December ¹⁴, 2020

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

20 By:

21 _____
Jeannie Simpelo
Trustee of Plaintiff Trust Funds

22 **IT IS SO ORDERED.**

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

26 DATED: December 22, 2020

27 _____
YVONNE GONZALEZ ROGERS
28 UNITED STATES DISTRICT JUDGE

Exhibit A: JOB REPORT FORM
Completed Forms Due by the last business day of each month
 by email to compliance@sjlawcorp.com (subject line: *Molina's Painting*), or
 delivered to Saltzman & Johnson, 1141 Harbor Bay Parkway, Ste. 100, Alameda, CA 94502

Employer: Molina's Painting & Wallcovering, Inc.
Report for the month of _____, 20__ Submitted by: _____

| | | | |
|------------------------------------|--|---------------------------------------|---|
| Project Name: | | | Public or Private? (Circle one) |
| Project Address: | | | |
| General Contractor: | | | |
| General Contractor Address: | | | |
| General Contractor Phone #: | | Project Manager Name: | |
| Project Manager Phone #: | | Project Manager email address: | |
| Contract #: | | Contract Date: | |
| Total Contract Value: | | | |
| Work Start Date: | | Work Completion Date: | |
| Project Bond #: | | Surety: | |

| | | | |
|------------------------------------|--|---------------------------------------|---|
| Project Name: | | | Public or Private? (Circle one) |
| Project Address: | | | |
| General Contractor: | | | |
| General Contractor Address: | | | |
| General Contractor Phone #: | | Project Manager Name: | |
| Project Manager Phone #: | | Project Manager email address: | |
| Contract #: | | Contract Date: | |
| Total Contract Value: | | | |
| Work Start Date: | | Work Completion Date: | |
| Project Bond #: | | Surety: | |

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