

1 Tracy L. Mainguy, Bar No. 176928  
2 Operating Engineers Local Union No. 3 Trust Funds - Multi-Services  
3 1620 South Loop Road  
4 Alameda, CA 94502  
5 (510) 748-7474

6 Attorney for Plaintiffs

7 UNITED STATES DISTRICT COURT  
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
9 (SAN FRANCISCO HEADQUARTERS)

10	KEN WALTERS, JOHN BONILLA, in their	)	Case No.: C-03-5477 SC
	respective capacities as Trustees of the	)	
11	OPERATING ENGINEERS HEALTH AND	)	<b>STIPULATION FOR ENTRY OF</b>
	WELFARE TRUST FUND FOR	)	<b>JUDGMENT BASED UPON</b>
12	NORTHERN CALIFORNIA et al.,	)	<b>SETTLEMENT AGREEMENT; ORDER</b>
		)	<b>THEREON</b>
13	Plaintiffs,	)	
		)	
14	vs.	)	
		)	
15	CARONE & SONS, INC., et al.	)	
		)	
16	Defendants.	)	
		)	

17  
18 Plaintiffs KEN WALTERS, JOHN BONILLA, in their respective capacities as Trustees of  
19 the OPERATING ENGINEERS HEALTH AND WELFARE TRUST FUND FOR NORTHERN  
20 CALIFORNIA; PENSION TRUST FUND FOR OPERATING ENGINEERS; PENSIONED  
21 OPERATING ENGINEERS HEALTH AND WELFARE FUND; OPERATING ENGINEERS  
22 AND PARTICIPATING EMPLOYERS PRE-APPRENTICESHIP, APPRENTICE AND  
23 JOURNEYMEN AFFIRMATIVE ACTION TRAINING FUND; OPERATING ENGINEERS  
24 VACATION AND HOLIDAY PLAN; OPERATING ENGINEERS CONTRACT  
25 ADMINISTRATION TRUST FUND; OPERATING ENGINEERS MARKET

STIPULATION FOR ENTRY OF JUDGMENT BASED UPON SETTLEMENT AGREEMENT; ORDER  
THEREON;;  
Case No. C 03-5477 SC

1 PRESERVATION TRUST FUND; OPERATING ENGINEERS INDUSTRY STABILIZATION  
2 TRUST FUND; BUSINESS DEVELOPMENT TRUST FUND; and HEAVY AND HIGHWAY  
3 COMMITTEE (“Operating Engineers Trust Funds”) and Defendants CARONE & SONS, INC. a  
4 California Corporation; and JOEL CARONE, individually (“Defendants”) stipulate and agree to  
5 the following:

6 1. On or about June 2, 2004, the Operating Engineers Trust Funds and the Defendants  
7 executed a settlement agreement entitled “SETTLEMENT AGREEMENT” in order to resolve  
8 the above-captioned proceeding. A copy of the Settlement Agreement is attached hereto as  
9 Exhibit A.

10 2. The Court retained jurisdiction to enforce the terms of the Settlement Agreement.

11 3. Paragraph One of the Settlement Agreement required the Defendants, and each of  
12 them, to make monthly installment payments in the amount of \$5,000.00 per month, beginning  
13 on May 15, 2004, and due on the 15<sup>th</sup> day of each consecutive month thereafter until the sum of  
14 \$64,119.71 is paid in full.

15 4. After execution of the Settlement Agreement, Defendants made only the following  
16 payments in the amount of \$5,000.00 pursuant to the Settlement Agreement:

Payment	Payment Amt.
5/15/2004	\$5,000.00
6/15/2004	\$5,000.00
7/25/2004	\$5,000.00
8/17/2004	\$5,000.00
9/28/2004	\$5,000.00
11/22/2004	\$5,000.00

25  
STIPULATION FOR ENTRY OF JUDGMENT BASED UPON SETTLEMENT AGREEMENT; ORDER  
THEREON;;

Case No. C 03-5477 SC

5. Paragraph 2 of the Settlement Agreement Provides:

If the Defendant fail to make any of the payments required under paragraph one of the Settlement Agreement by the fifteenth day of the month in which the payment is due, the Defendants are in default of its obligation under this agreement. In the event that the Defendants are in default, then the remainder of the outstanding payments owed under paragraph one will be immediately due and payable to Plaintiffs within five days of written notice of such default to Defendants. In the event that Defendants fail to pay the outstanding payments upon notice of the default, Plaintiffs will be entitled to enter a judgment in the amount of \$190,184.75 (the principal balance, liquidated damages and interest relating to Account No. 21-15235-24 as reflected in the Employer Statement of Account, a copy of which is attached hereto) less any payments received pursuant to paragraph one of the Settlement Agreement, plus their reasonable attorney's fees and costs associated with enforcing the terms of this Settlement Agreement.

In light of the Defendant's failure to make any payments under the Settlement Agreement since November of 2004, on February 16, 2005, the Plaintiffs declared Defendants' default by sending a letter declaring the default to Joel Carone and Carone & Sons, Inc. and to its Attorney of Record, Cary McReynolds. To date, the Defendants failed to cure the default. Rather, Defendants averred that Carone & Sons, Inc. ceased operations and agreed to stipulate to the immediate entry of judgment under the Settlement Agreement.

6. Consequently judgment will be entered pursuant to the Settlement Agreement in the amount of \$34,119.71 [\$64,119.71 less the payments received to date in the amount of \$30,000.00].

DATED: 3-28-05

OPERATING ENGINEERS LOCAL UNION NO. 3  
TRUST FUNDS - MULTI-SERVICES  
By: Wayne E. McBride  
WAYNE E. MCBRIDE  
COLLECTION MANAGER

STIPULATION FOR ENTRY OF JUDGMENT BASED UPON SETTLEMENT AGREEMENT; ORDER THEREON;  
Case No. C 03-5477 SC

1 Approved as to form:

2 DATED:

3 3/28/05

OPERATING ENGINEERS LOCAL UNION NO. 3  
TRUST FUNDS - MULTI-SERVICES

4 By: Tracy L. Mainguy  
5 TRACY L. MAINGUY  
6 ATTORNEY FOR PLAINTIFFS

7 DATED: 3/25/05

8 By: Joel Carone  
9 JOEL CARONE  
10 PRESIDENT  
11 DEFENDANT CARONE & SONS, INC.

12 DATED: 3/25/05

13 By: Joel Carone  
14 Defendant JOEL CARONE,  
15 individually and personally

16 Approved as to form:

17 DATED:

18 3/24/05

19 ANDERSEN & BONNIFIELD

20 By: Cary D. McReynolds  
21 CARY D. McREYNOLDS  
22 ATTORNEY FOR DEFENDANTS

23 ORDER

24 Good Cause Appearing, based upon the forgoing, and the Settlement Agreement, the  
25 Court will enter a judgment forthwith in the amount of \$34,119.71 against the Defendants, and  
each of them.

Dated:

SAMUEL CONTI  
HONORABLE UNITED STATES DISTRICT JUDGE

STIPULATION FOR ENTRY OF JUDGMENT BASED UPON SETTLEMENT AGREEMENT; ORDER  
THEREON;;  
Case No. C 03-5477 SC

## SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT ("Settlement Agreement") is made between Plaintiffs KEN WALTER and DON DOSER, in their respective capacities as Trustees of the OPERATING ENGINEERS HEALTH AND WELFARE TRUST FUND FOR NORTHERN CALIFORNIA, PENSION TRUST FUND FOR OPERATING ENGINEERS; PENSIONED OPERATING ENGINEERS HEALTH AND WELFARE FUND; OPERATING ENGINEERS AND PARTICIPATING EMPLOYERS PRE-APPRENTICESHIP, APPRENTICE AND JOURNEYMEN AFFIRMATIVE ACTION TRAINING FUND; OPERATING ENGINEERS VACATION AND HOLIDAY PLAN; OPERATING ENGINEERS CONTRACT ADMINISTRATION TRUST FUND; OPERATING ENGINEERS MARKET PRESERVATION TRUST FUND; OPERATING ENGINEERS INDUSTRY STABILIZATION TRUST FUND; BUSINESS DEVELOPMENT TRUST FUND; and HEAVY AND HIGHWAY COMMITTEE ("Plaintiffs" or "Operating Engineers Trust Funds"), DEFENDANT CARONE & SONS, INC. and Defendant JOEL CARONE (hereinafter collectively referred to as "Defendants").

### Recitals Of Fact

The Plaintiffs and Defendants are parties to that certain action entitled Ken Walters, et al., v. Carone & Sons, Inc. et al., Case No. C03-5477 SC, which is pending in the United States District Court for the Northern District of California (the "Lawsuit").

All of the parties wish to settle the Lawsuit and to resolve all claims between them arising from the circumstances set forth in the pleadings in the Lawsuit.

WHEREAS, the parties therefore agree as follows:

### Stipulation

- 64,117<sup>71</sup>
- 64,117<sup>71</sup>
1. The Defendants agree to pay to the Operating Engineers Trust Funds the sum of ~~\$74,480.12~~ for the principal contributions owed to the Operating Engineers Trust Funds based upon covered work performed by employees of Carone & Sons, Inc. The aforementioned payment will be made in the form of monthly installments in the amount of \$5,000.00 per installment, beginning on May 15, 2004, and due on the 15<sup>th</sup> day of each of the consecutive months thereafter until the sum of ~~\$74,480.12~~ is paid in full. Payments will be by check made payable to "Operating Engineers Trust Funds" and directed to the attention of Tracy L. Mainguy at 1620 South Loop Road, Alameda, California.

The administrator for the Trust Funds shall be responsible for allocating said sum among the Trust Funds.

2. If the Defendants fail to make any of the payments required under paragraph one of the Settlement Agreement by the fifteenth day of the month in which the

EXHIBIT            A

payment is due, the Defendants are in default of its obligations under this agreement. In the event that the Defendants are in default, then the remainder of the outstanding payments owed under paragraph one will be immediately due and payable to the Plaintiffs within five days of written notice of such default to Defendants. In the event that Defendants fail to pay the outstanding payments upon notice of the default, Plaintiffs will be entitled to enter a judgment in the amount of \$190,184.75 (the principal balance, liquidated damages and interest relating to Account No. 21-15235-24 as reflected in the Employer Statement of Account, a copy of which is attached hereto) less any payments received pursuant to paragraph one of the Settlement Agreement, plus their reasonable attorneys' fees and costs associated with enforcing the terms of this Settlement Agreement.

3. From the date of the execution of this Settlement Agreement forward, the Defendants agree to comply with the requirements contained in applicable Operating Engineer Trust Agreements by submitting on or before the 15<sup>th</sup> day of the day after the end of the month, both an Employer Report of Contributions detailing the individuals who performed work covered by Carone & Sons, Inc.'s collective bargaining agreement with Operating Engineers Local Union No. 3, the number of covered hours worked during that work month and the amount owed to the Operating Engineers Trust Funds as a result, along with a check made payable to the "Operating Engineers Trust Funds" for the corresponding amount due. Failure to make any payment due under this paragraph by the twenty-fifth (25<sup>th</sup>) day of the month in which it was originally due will constitute a default of the terms of this Settlement Agreement.
4. In the event that the Defendants are in default under paragraph 3 of the Settlement Agreement, then the remainder of the outstanding payments owed under paragraph one of this Settlement Agreement will be immediately due and payable to the Plaintiffs within five days of written notice of such default to Defendants. In the event that Defendants fail to pay all outstanding payments in full upon notice of the default, the Defendants agree to the entry of a stipulated judgment in the amount of \$190,184.75 (the principal balance, liquidated damages and interest relating to Account No. 21-15235-24 as reflected in the Employer Statement of Account, a copy of which is attached hereto), less any installment payments for the liability described in paragraph one above, plus the attorney's fees and costs associated with the default.
5. If and only if the Defendants make each of the payments described in paragraph one and paragraph three of this Settlement Agreement in a timely manner, then the Trust Funds will waive liquidated damages in the amount of \$115,704.63 owed to Trust Funds by Defendants.
6. Each party represents that it had the opportunity to discuss the contents and effect of this Settlement Agreement with its legal counsel and that it fully understands the terms of this Settlement Agreement and its effect upon it. Each party expressly waives any claim that it did not understand the meaning of this

Settlement Agreement, or any provision thereof, or that such Settlement Agreement or provision was misrepresented to it.

- 7. This Settlement Agreement is the product of negotiation and preparation by and among the parties hereto. The parties therefore expressly acknowledge and agree that this Settlement Agreement shall not be deemed prepared or drafted by any one party or the other, or its attorneys, and will be construed accordingly.
- 8. Each party shall be responsible for its own attorney's fees and costs incurred in the Lawsuit and in the preparation of this Settlement Agreement.
- 9. This Settlement Agreement represents the entire agreement of the parties with respect to the subject matter hereof, and supersedes and extinguishes any prior or contemporaneous agreement, whether written or oral, with respect thereof.
- 10. This Settlement Agreement shall be construed in accordance with the laws of the State of California.
- 11. This Settlement Agreement may be executed in one or more counterparts, and all counterparts so executed shall constitute a single agreement, which shall be binding and final by the parties. Executed counterparts may be exchanged by fax.
- 12. The parties agree that the District Court retain jurisdiction over the Lawsuit to enforce the terms of the Settlement Agreement.

IN WITNESS WHEREOF, each of the parties has executed this Settlement Agreement on the date specified below:

DATED: 6-4-04

By: Wayne E. McBride  
 WAYNE E. MCBRIDE  
 COLLECTION MANAGER  
 OPERATING ENGINEERS LOCAL UNION  
 NO. 3 TRUST FUNDS - MULTI-SERVICES

Approved as to form:

DATED: 6-4-04


OPERATING ENGINEERS LOCAL UNION  
 NO. 3 TRUST FUNDS - MULTI-SERVICES

By: Tracy L. Mainguy  
 TRACY L. MAINGUY

DATED: 5/27/04

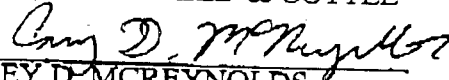
By:   
JOEL CARONE, individually

DATED: 5/27/04

By:   
JOEL CARONE as President and on  
behalf of CARONE & SONS, INC.

Approved as to form:  
DATED: 6/2/04

ANDERSEN, BONNIFIELD & COTTLE

By:   
CAREY D. MCREYNOLDS  
Attorney for Defendants