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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

1 ATKINSON, ANDELSON, LOYA, RUUD & ROMO
2 A Professional Corporation
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9 Attorneys for Defendants S. J. WEAVER
10 CONTRACTING, INC. and STEVEN J.
11 WEAVER

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

14 JOSE MORENO as CHAIRMAN and
15 LARRY TOTTEN as CO-CHAIRMAN
16 of the BOARD OF TRUSTEES FOR
17 THE LABORERS HEALTH AND
18 WELFARE TRUST FUND FOR
19 NORTHERN CALIFORNIA;
20 LABORERS VACATION-HOLIDAY
21 TRUST FUND FOR NORTHERN
22 CALIFORNIA; LABORERS PENSION
23 TRUST FUND FOR NORTHERN
24 CALIFORNIA; and LABORERS
25 TRAINING AND RETRAINING
26 TRUST FUND FOR NORTHERN
27 CALIFORNIA,

28 Plaintiffs,

vs.

S. J. WEAVER CONTRACTING, INC.,
a California corporation; and STEVEN
J. WEAVER, and Individual,

Defendant.

CASE NO. C-04-4699 SI
[Assigned to Hon. Susan Illston for all purposes.]

DECLARATION OF STEVEN
WEAVER IN SUPPORT OF
DEFENDANTS' MOTION TO SET
ASIDE ENTRY OF DEFAULT

JUDGE: Hon. Susan Illston
DATE: June 3, 2005
TIME: 9:00 a.m.
DEPT: 10, 19th Floor

I, Steven J. Weaver, do declare and state as follows:

1. I was the President of S. J. Weaver Contracting, Inc. ("SJW") at all times relevant hereto. I have personal knowledge of the following facts and if called as a witness, could and would competently testify thereto under oath.

ATKINSON, ANDELSON, LOYA, RUUD & ROMO
A PROFESSIONAL CORPORATION
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1 2. Over the last ten-plus years, SJW has been engaged in ground-up
2 construction of gas stations and mini-marts, and in retrofitting gas station storage
3 tanks, lines, pumps and related equipment. Except for the single project
4 referenced below, SJW has always been a non-union employer. On December 10,
5 2003, SJW executed a purported collective bargaining agreement with the
6 Northern California District Council of Laborers (“Union”) to perform work on a
7 single project known as Brannan Square in San Francisco. It was represented to
8 SJW that the agreement was a one-time or “project labor agreement” for that
9 project. SJW complied with its obligations on that project, including the
10 submission of all fringe benefit contributions to Plaintiffs. Until learning of the
11 existence of the lawsuit, SJW understood that all parties agreed that SJW’S
12 obligations under the collective bargaining agreement did not extend beyond the
13 one job.

14 3. Unbeknownst to S. J. Weaver Contracting, Inc. (“SJW”) and myself,
15 on November 5, 2004, Plaintiffs filed the underlying Complaint for Damages for
16 Breach of Collective Bargaining Agreements, to Recover Trust Fund
17 Contributions and for a Mandatory Injunction (the “Complaint”). It is my
18 understanding that Plaintiffs are the chairmen of the Board of Trustees for various
19 trust funds operated by the Laborers’ union and are apparently claiming that SJW
20 is liable for unpaid trust fund contributions to Plaintiffs. It is not clear why
21 Plaintiffs have named me as an individual Defendant since I would not have been
22 signatory to any alleged agreement with Plaintiffs and would not be responsible
23 for any alleged unpaid trust fund contributions. Plaintiffs naming of me appears to
24 simply be a form of harassment as I have never agreed to be personally liable to
25 make fringe benefit contributions.

26 4. On November 30, 2004, at 12:25 p.m., a process server working for
27 Plaintiffs allegedly personally served me at SJW’s offices at 2651 Walnut Avenue
28 in Signal Hill, California. However, I have absolutely no recollection of having

1 been served with any legal process on such date, including the summons and
2 complaint in this matter. I have conducted searches in good faith for the summons
3 and complaint and have been unable to find the documents. Additionally, SJW
4 has no record of either it or me having been served with the summons and
5 complaint in this action. In fact, I was not in the office for the majority of the
6 workday on that date, but was rather out of the office, walking the grounds at
7 SJW's various construction sites. A list of my cell phone calls during the day
8 show that I was consistently using the cell phone while out of the office. A true
9 and correct copy of a list of my cell phone calls from that day is attached hereto as
10 Exhibit "A."

11 5. If I had been at SJW's office during the time period specified in the
12 proof of service, SJW's receptionist would have some record of the process server
13 checking in and asking to speak with me. It is not possible to gain access to
14 SJW's office at 2651 Walnut Ave., or any of the building's occupants, without
15 first going through SJW's reception area. SJW's receptionist has no record of any
16 process server speaking with me on November 30, 2004 at 12:25 p.m.

17 6. On December 2, 2004, a process server working for Plaintiffs
18 allegedly personally served SJW's agent for service of process, Ash Patel, Esq.
19 SJW has a normal business practice with respect to service of lawsuits on it. Ash
20 Patel is denoted as SJW's agent for service of process. Patel owns and operates an
21 outside accountancy business, and works out of offices in Anaheim, California.
22 Upon receipt of legal process, Patel's office contacts SJW's controller, Amy Lee.
23 Lee contacts me to inform me of the receipt of legal process, and then immediately
24 proceeds to Patel's office in Anaheim, California to physically obtain the
25 documents. Upon her return, she takes the legal process to either me or David
26 Gaines, SJW's Vice President. Gaines and I then discuss the legal process and
27 whether to contact SJW's outside counsel, or how best to handle the situation.

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in this matter. Additionally, I have no recollection of receiving the summons and complaint in this matter or of discussing same with Lee and/or Gaines. Finally, I am informed and believe that neither Patel or Lee has any recollection of receiving the summons and complaint in this matter.

8. Further, even if SJW and/or I were properly served, any failure to respond was solely the product of excusable neglect rather than a conscious desire to engage in culpable conduct. The failure to locate or respond to the summons and complaint in this matter are an isolated occurrence, in an otherwise efficient process of conveying legal process between SJW's agent for service of process and SJW and/or me.

9. Neither I nor SJW had any conscious desire to avoid responding to the lawsuit. In fact, my (and SJW's) first actual knowledge of this lawsuit came about only upon the receipt of Plaintiff's Request for Entry of Default on February 3, 2005 in this matter. Upon receipt of the Request for Entry of Default, I immediately contacted SJW's outside counsel, who referred me to current counsel for representation.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 19th day of April 2005, at CERRITOS, California



STEVEN J. WEAVER, Declarant

EXHIBIT A

Call Detail (Continued)

562-881-7900

User Name: STEVE WEAVER

Rate Code: MME0=Unlimited Expd M2M, 1KNW=1000 N&W, BN00=BBBPAT750001KNWJMM, DFMR=Call Delivery
Rate Period (PD): DT=Daytime, NW=Nwknd
Feature: M2MC=Expanded Mobile to Mobile, CW=Call Waiting, VM=VOICE MAIL, FFMR=Call Delivery Service,
DACC=Direct Asst Call Complete

Item	Day	Date	Time	Number Called	Call To	Min	Rate Code	Rate Pd	Feature	Airtime Charge	LD/Add'l Charge	Total Charge
217		11/29	12:12PM	310-308-7575	GARDEN CA	1	MME0	DT	M2MC			0.00
218		11/29	12:14PM	714-348-5719	ANAHEI CA	2	BN00	DT				0.00
219		11/29	12:31PM	562-881-7900	INCOMI CL	1	BN00	DT				0.00
220		11/29	12:42PM	714-412-8472	ANAHEI CA	2	BN00	DT				0.00
221		11/29	12:44PM	714-412-8472	CALL WAIT	12	BN00	DT	CW			0.00
222		11/29	1:12PM	562-494-7222	INCOMI CL	3	BN00	DT				0.00
223		11/29	1:21PM	849-640-0682	INCOMI CL	1	BN00	DT				0.00
224		11/29	1:27PM	562-883-3578	INCOMI CL	3	MME0	DT	M2MC			0.00
225		11/29	1:36PM	562-494-7222	INCOMI CL	1	BN00	DT				0.00
226		11/29	1:42PM	562-342-8904	INCOMI CL	1	BN00	DT				0.00
227		11/29	2:19PM	310-308-7575	INCOMI CL	2	MME0	DT	M2MC			0.00
228		11/29	2:41PM	562-883-3579	CALL WAIT	17	MME0	DT	M2MC			0.00
229		11/29	2:57PM	602-524-0056	PHOENI AZ	2	MME0	DT	M2MC			0.00
230		11/29	3:00PM	562-427-6130	INCOMI CL	3	BN00	DT				0.00
231		11/29	3:04PM	562-494-7652	ALAMIT CA	1	BN00	DT				0.00
232		11/29	3:30PM	714-393-2099	INCOMI CL	1	BN00	DT				0.00
233		11/29	3:32PM	562-290-8858	LONG B CA	3	BN00	DT				0.00
234		11/29	3:35PM	562-881-7914	CALL WAIT	12	MME0	DT	M2MC			0.00
235		11/29	3:46PM	562-290-8858	LONG B CA	3	BN00	DT				0.00
236		11/29	3:49PM	602-524-0056	PHOENI AZ	5	MME0	DT	M2MC			0.00
237		11/29	4:04PM	562-883-3579	CALL WAIT	11	MME0	DT	M2MC			0.00
238		11/29	4:15PM	714-322-8622	CALL WAIT	4	MME0	DT	M2MC			0.00
239		11/29	4:18PM	310-308-7575	CALL WAIT	4	MME0	DT	M2MC			0.00
240		11/29	4:57PM	562-881-1234	Voice CL	3	BN00	DT	VM			0.00
241		11/29	5:01PM	415-775-0276	SAN FR CA	2	BN00	DT				0.00
242		11/29	5:08PM	760-844-3876	ESCOND CA	5	BN00	DT				0.00
243		11/29	5:28PM	562-494-7222	INCOMI CL	1	BN00	DT				0.00
244		11/29	5:46PM	562-577-6145	LONG B CA	2	MME0	DT	M2MC			0.00
245		11/29	5:47PM	562-342-8904	CALL WAIT	7	BN00	DT	CW			0.00
246		11/29	5:54PM	562-881-1234	Voice CL	2	BN00	DT	VM			0.00
247		11/29	5:58PM	408-383-3228	CALL WAIT	2	BN00	DT	CW			0.00
248		11/29	5:59PM	562-577-6145	LONG B CA	9	MME0	DT	M2MC			0.00
249		11/29	6:26PM	562-881-7906	LONG B CA	7	MME0	DT	M2MC			0.00
250		11/29	6:46PM	562-881-7941	LONG B CA	2	MME0	DT	M2MC			0.00
251	TUE	11/30	6:33AM	510-601-5880	OAKLAN CA	3	1KNW	NW				0.00
252		11/30	7:25AM	714-412-8472	CALL WAIT	3	BN00	DT	CW			0.00
253		11/30	7:28AM	714-412-8472	ANAHEI CA	3	BN00	DT				0.00
254		11/30	7:34AM	408-898-7822	CALL WAIT	1	BN00	DT	CW			0.00
255		11/30	7:35AM	310-308-7575	CALL WAIT	1	BN00	DT	CW			0.00
256		11/30	7:53AM	562-881-7904	LONG B CA	1	MME0	DT	M2MC			0.00
257		11/30	7:59AM	562-881-7904	CALL WAIT	9	MME0	DT	M2MC			0.00
258		11/30	8:07AM	562-881-7900	INCOMI CL	1	BN00	DT				0.00
259		11/30	8:09AM	714-322-8622	ANAHEI CA	1	MME0	DT	M2MC			0.00
260		11/30	8:16AM	562-881-7904	INCOMI CL	1	BN00	DT				0.00
261		11/30	8:18AM	562-881-7914	LONG B CA	6	MME0	DT	M2MC			0.00
262		11/30	8:24AM	562-881-7930	LONG B CA	3	MME0	DT	M2MC			0.00
263		11/30	8:30AM	602-463-8076	PHOENI AZ	11	BN00	DT				0.00
264		11/30	10:37AM	707-631-5685	FAIRFL CA	11	MME0	DT	M2MC			0.00
265		11/30	10:48AM	562-881-7901	LONG B CA	1	MME0	DT	M2MC			0.00
266		11/30	10:50AM	562-881-7906	LONG B CA	1	MME0	DT	M2MC			0.00
267		11/30	10:51AM	562-881-7922	LONG B CA	1	MME0	DT	M2MC			0.00
268		11/30	10:54AM	707-631-5685	FAIRFL CA	1	MME0	DT	M2MC			0.00
269		11/30	10:55AM	562-881-7922	CALL WAIT	4	MME0	DT	M2MC			0.00
270		11/30	10:55AM	562-243-6861	CALL WAIT	4	MME0	DT	M2MC			0.00

Call Detail (Continued)

562-881-7900

User Name: STEVE WEAVER

Rate Code: MME0=Unlimited Expd M2M, 1KNW=1000 N&W, BN00=BBBPAT750001KNWUMM, DFMR=Call Delivery
Rate Period (PD): DT=Daytime, NW=Nwkrnd
Feature: M2MC=Expanded Mobile to Mobile, CW=Call Waiting, VM=VOICE MAIL, FFMR=Call Delivery Service,
DAOC=Direct Ass: Call Complete

Item	Day	Date	Time	Number Called	Call To	Min	Rate Code	Rate Pd	Feature	Airtime Charge	L/D/Add'l Charge	Total Charge
271		11/30	10:59AM	562-881-7922	INCOMI CL	9	MME0	DT	M2MC			0.00
272		11/30	11:24AM	562-494-7222	INCOMI CL	3	BN00	DT				0.00
273		11/30	11:36AM	562-881-7901	LONG B CA	1	MME0	DT	M2MC			0.00
274		11/30	11:50AM	562-881-7900	INCOMI CL	1	BN00	DT				0.00
275		11/30	12:00PM	562-881-7914	INCOMI CL	4	MME0	DT	M2MC			0.00
276		11/30	12:19PM	909-263-9607	INCOMI CL	1	BN00	DT				0.00
277		11/30	12:34PM	562-881-1234	Voice CL	4	BN00	DT	VM			0.00
278		11/30	12:42PM	714-322-9622	ANAHEI CA	1	MME0	DT	M2MC			0.00
279		11/30	12:47PM	714-231-5922	INCOMI CL	1	BN00	DT				0.00
280		11/30	1:05PM	707-228-9114	SANTA CA	5	MME0	DT	M2MC			0.00
281		11/30	1:36PM	562-881-7914	LONG B CA	4	MME0	DT	M2MC			0.00
282		11/30	1:39PM	714-231-5922	CALL WAIT	9	BN00	DT	CW			0.00
283		11/30	1:40PM	562-881-7900	CALL WAIT	1	BN00	DT	CW			0.00
284		11/30	1:55PM	562-881-7900	CALL WAIT	2	BN00	DT	CW			0.00
285		11/30	2:04PM	714-322-9622	ANAHEI CA	2	MME0	DT	M2MC			0.00
286		11/30	2:06PM	562-254-8180	LONG B CA	2	BN00	DT				0.00
287		11/30	2:13PM	562-254-8180	LONG B CA	3	BN00	DT				0.00
288		11/30	2:34PM	949-294-2600	CALL WAIT	3	MME0	DT	M2MC			0.00
289		11/30	2:38PM	714-322-9622	INCOMI CL	1	BN00	DT				0.00
290		11/30	2:54PM	714-348-5718	INCOMI CL	2	BN00	DT				0.00
291		11/30	3:17PM	562-254-8180	INCOMI CL	1	BN00	DT				0.00
292		11/30	3:20PM	714-412-9472	INCOMI CL	1	BN00	DT				0.00
293		11/30	3:22PM	714-348-5718	ANAHEI CA	8	BN00	DT				0.00
294		11/30	3:30PM	714-348-5718	INCOMI CL	5	BN00	DT				0.00
295		11/30	3:35PM	562-888-1448	CALL WAIT	6	BN00	DT	CW			0.00
296		11/30	3:39PM	714-348-5718	ANAHEI CA	1	BN00	DT				0.00
297		11/30	3:42PM	714-348-5718	INCOMI CL	4	BN00	DT				0.00
298		11/30	3:56PM	408-898-7622	INCOMI CL	1	BN00	DT				0.00
299		11/30	4:18PM	310-308-7575	INCOMI CL	1	BN00	DT				0.00
300		11/30	4:22PM	408-898-7622	INCOMI CL	5	BN00	DT				0.00
301		11/30	4:27PM	562-881-7922	LONG B CA	6	MME0	DT	M2MC			0.00
302		11/30	4:34PM	408-898-7622	INCOMI CL	4	BN00	DT				0.00
303		11/30	5:10PM	562-577-6145	CALL WAIT	2	MME0	DT	M2MC			0.00
304		11/30	5:12PM	562-881-7907	CALL WAIT	3	MME0	DT	M2MC			0.00
305		11/30	5:57PM	562-883-3579	CALL WAIT	12	MME0	DT	M2MC			0.00
306		11/30	6:09PM	562-630-6207	COMPTO CA	2	BN00	DT				0.00
307		11/30	6:20PM	707-631-5689	INCOMI CL	1	BN00	DT				0.00
308		11/30	6:22PM	707-631-5689	DOMEST CL	6	MME0	DT	M2MC			0.00
309		11/30	7:24PM	562-881-1234	DOMEST CL	4	BN00	DT				0.00
310		11/30	7:28PM	562-881-7900	INCOMI CL	20	MME0	DT	M2MC			0.00
311		11/30	7:28PM	Roaming	Incoming	20	DFMR	DT	FFMR			0.00
312		11/30	7:48PM	562-881-7914	LONG B CA	25	MME0	DT	M2MC			0.00
313		11/30	8:13PM	562-881-7914	INCOMI CL	1	BN00	DT				0.00
314		11/30	8:20PM	562-881-7948	LONG B CA	2	MME0	DT	M2MC			0.00
315	WED	12/01	4:45AM	707-631-5685	FAIRFL CA	4	1KNW	NW				0.00
316		12/01	4:49AM	562-577-6145	LONG B CA	4	1KNW	NW				0.00
317		12/01	6:05AM	630-966-3980	INCOMI CL	6	1KNW	NW				0.00
318		12/01	6:36AM	770-712-3008	ATLANT GA	6	1KNW	NW				0.00
319		12/01	6:49AM	562-216-2400	INCOMI CL	1	BN00	NW				0.00
320		12/01	6:51AM	770-345-1344	INCOMI CL	1	BN00	NW				0.00
321		12/01	8:37AM	206-396-8589	SEATTL WA	2	BN00	DT				0.00
322		12/01	8:12AM	206-396-8588	SEATTL WA	5	BN00	DT				0.00
323		12/01	9:27AM	525-251-6222	CALL WAIT	1	BN00	DT	CW			0.00
324		12/01	9:27AM	510-331-9688	CALL WAIT	10	MME0	DT	M2MC			0.00

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FACSIMILE: (562) 653-3333

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 17871 Park Plaza Drive, Suite 200, Cerritos, California 90703;

On April 22, 2005, I served the foregoing document described as
DECLARATION OF STEVEN WEAVER IN SUPPORT OF DEFENDANTS' MOTION TO SET ASIDE ENTRY OF DEFAULT

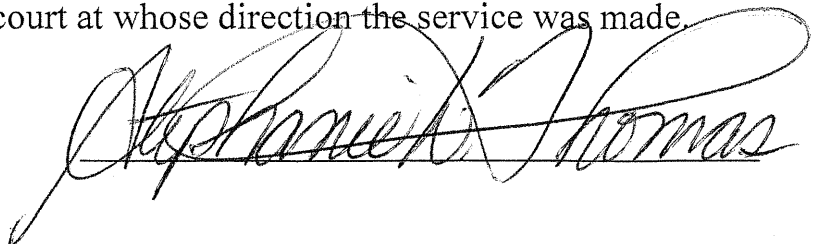
on the interested parties in this action on the **ATTACHED SERVICE LIST** by the method indicated below:

- (BY MAIL)** I caused a sealed envelope with postage thereon fully prepaid to be placed in the U.S. mail at Cerritos, California. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of a party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- (OVERNIGHT MAIL)** I sent such document(s) by Overnight Express for overnight delivery with delivery fees prepaid or provided for in accordance with ordinary business practices at Cerritos, California.
- (BY PERSONAL DELIVERY)** I caused to have delivered a sealed envelope by hand to the office of the addressee(s) noted above.
- (BY FACSIMILE TRANSMISSION)** I caused such document to be transmitted to the addressee(s) facsimile number noted above. The facsimile machine I used complied with Rule 2003(3) and the transmission was reported as complete and without error. I caused the machine to print a transmission record of the facsimile transmission, a copy of which is attached to this declaration.

Executed on April 22, 2005, at Cerritos, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and, that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Stephanie L. Thomas



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SERVICE LIST

Moreno, et al. v. S.J. Weaver Contracting, Inc., et al.
USDC ND Cal. No. C 04-4699 SI

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Bruce K. Leigh, Esq.
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Attorneys for
Plaintiffs