

1 Alison L. Tsao, State Bar No. 198250
 Nancy G. Berner, State Bar No. 227142
 2 **CARLTON DiSANTE & FREUDENBERGER LLP**
 601 Montgomery Street
 3 Suite 350
 San Francisco, California 94111
 4 Telephone: (415) 981-3233
 Facsimile: (415) 981-3246
 5 E-Mail: atsao@cdflaborlaw.com
nberner@cdflaborlaw.com

6 Attorneys for Defendant

8 Richard K. Grosboll, State Bar No. 99729
 Chloe Quail, State Bar No. 262797
 9 **NEYHART, ANDERSON, FLYNN & GROSBOLL**
 369 Pine Street, Suite 800
 10 San Francisco, CA 94104
 Tel. (415) 677-9440
 11 Fax (415) 677-9445
 Email: cquail@neyhartlaw.com

12 Attorneys for Plaintiffs

14 **UNITED STATES DISTRICT COURT**
 15 **NORTHERN DISTRICT OF CALIFORNIA**
 16 **(SAN JOSE DIVISION)**

17	ORANGE COUNTY ELECTRICAL)	Case No. CV11-0575 EJD
	INDUSTRY HEALTH AND WELFARE)	
18	TRUST FUND; LOCAL UNION NO. 441 OF)	Judge Edward J. Davila
	THE INTERNATIONAL BROTHERHOOD OF)	
19	ELECTRICAL WORKERS; and DOUGLAS)	STIPULATION FOR DISMISSAL
	CHAPPELL, as Trustee of the above TRUST)	WITHOUT PREJUDICE; [PROPOSED]
20	FUND,)	ORDER
)	
21	Plaintiffs,)	Action Filed: February 8, 2011
	vs.)	
22)	
	ACTION ELECTRIC CORPORATION, a)	
23	California Corporation,)	
)	
24	Defendant.)	

26 IT IS HEREBY STIPULATED AND AGREED by and among Plaintiffs ORANGE
 27 COUNTY ELECTRICAL INDUSTRY HEALTH AND WELFARE TRUST FUND; LOCAL
 28 UNION NO. 441 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL

1 WORKERS; and DOUGLAS CHAPPELL, as Trustee of the above TRUST FUND (the
2 “Plaintiffs”) and Defendant ACTION ELECTRIC CORPORATION (“Defendant”) (collectively,
3 the “Parties”) as follows:

- 4 1. Plaintiff has brought the above-captioned action, *Orange County Electrical Industry Health*
5 *and Welfare Trust Fund; Local Union No. 441 of the International Brotherhood of*
6 *Electrical Workers; and Douglas Chappell, as Trustee of the above Trust Fund v. Action*
7 *Electric, Inc.*, Case No. CV 11-00575 EJD (the “Action”), seeking, *inter alia*, the payment
8 of delinquent health benefit contributions to the Plaintiffs and the recovery of interest,
9 liquidated damages, and attorneys’ fees and costs incurred in connection with this action, as
10 well as equitable relief.
- 11 2. With the intent to avoid the costs and time of further litigation, the Parties have agreed to
12 resolve and dismiss this action in accordance with the terms set forth in the Parties’
13 settlement agreement (“Agreement”). This Stipulation for Dismissal Without Prejudice (the
14 “Stipulation”) effectuates one of the terms of the Agreement.

15
16
17 **TERMS OF STIPULATION**

- 18 3. In accordance with the terms of the Parties’ Agreement, the Parties stipulate and request
19 that this Court dismiss this action without prejudice.
- 20 4. It is further stipulated and agreed that the terms of this Stipulation shall be binding on the
21 heirs, successors, and assigns of the parties to this action.
- 22 5. The Plaintiffs agree that Defendant’s complete performance of all terms and conditions of
23 the Parties’ Agreement shall discharge the Defendant's obligations and liabilities with
24 respect to this Action and all claims made by Plaintiffs in this Action. The Plaintiffs further
25 agree that they will not reinstitute legal proceedings against the Defendant seeking payment
26 of any purported delinquency amount and/or outstanding contribution amount as well as
27
28

1 any additional attorneys' fees, liquidated damages, or interest, or any other remedy that it
2 sought or could have sought in this lawsuit with respect to the specific allegations and
3 claims made in the Action; provided, however, that nothing herein shall preclude the
4 Plaintiffs from initiating legal proceedings to collect any other amounts that may become
5 owed to the Plaintiffs subsequent to the date of this Stipulation or are discovered owed for
6 work performed between May 2009 to June 2011 based on discrepancies found in the
7 course of the audit conducted in August 2011.

- 8
- 9 6. Upon Defendant's completion of its obligations by the Agreement, the Parties shall file a
10 Stipulation for Dismissal with Prejudice of the Action.
- 11 7. The parties acknowledge that they have each had the opportunity to be represented by
12 independent counsel of their own choice throughout all of the negotiations that preceded the
13 execution of this Stipulation. Plaintiffs and Defendant further acknowledge that they have
14 had adequate opportunity to perform whatever investigation or inquiry each deemed
15 necessary in connection with the subject matter of this Stipulation prior to its execution and
16 agree with the delivery and acceptance of the consideration specified in this Stipulation.
- 17
- 18 8. This Stipulation may be executed in counterparts, which taken together shall constitute the
19 Stipulation and be binding upon and effective as to all parties hereto.
- 20
- 21 9. The Parties hereto mutually state that they have read the foregoing Stipulation and are fully
22 aware of its contents and legal facts. This Stipulation is entered into on the dates below as
23 indicated.
- 24 10. Except as specifically set forth herein, each party shall bear its own costs and attorney's
25 fees.
- 26 11. All Notices with respect to this Stipulation shall be sent to the Parties' respective counsel of
27 record in this Action – Alison Tsao for Defendant and Chloe Quail for Plaintiffs. Notice to
28

1 such counsel by email, fax, hand delivery or overnight express mail shall constitute
2 adequate notice under this Stipulation.

3 Dated: September 15, 2011 Respectfully submitted,

4 NEYHART, ANDERSON, FLYNN & GROSBOLL

5
6
7 By: /S/ Chloe Quail

Chloe Quail

8 Attorneys for Plaintiffs
9 IBEW Local 441 Health and Welfare and Pension Trust
Funds

10 Dated: September 15, 2011

CARLTON DiSANTE & FREUDENBERGER LLP

11
12
13 By: /S/ Nancy G. Berner

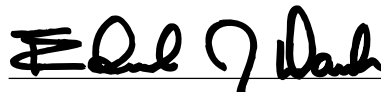
Nancy G. Berner

14 Attorneys for Defendant
15 ACTION ELECTRIC CORPORATION

16
17 ~~PROPOSED~~ ORDER

18 The above-stated Stipulation is incorporated herein in its entirety and made an order of this Court.
19 This action is hereby dismissed without prejudice.

20 Dated: September 19, 2011



21 UNITED STATES DISTRICT JUDGE
22 EDWARD J. DAVILA