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IN CLERKS OFFICE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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U.S. DISTRICT COURT
DISTRICT OF MASS.

GINA M. ALONGI, as she is ADMINISTRATOR,
INTERNATIONAL UNION OF OPERATING
ENGINEERS LOCAL 4 HEALTH AND WELFARE,
PENSION, ANNUITY AND SAVINGS FUNDS,
LABOR-MANAGEMENT COOPERATION TRUST, and
HOISTING AND PORTABLE ENGINEERS LOCAL 4
APPRENTICE AND TRAINING FUND,
Plaintiffs,

vs.

R&M EXCAVATION DB, INC. and
DAVID BERTRAND, Individually,
Defendants.

C.A. No. 14-12811 MLW

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION TO OBTAIN AUDIT

Upon the Verified Complaint and the Memorandum in support of their Motion for Preliminary Injunction, the Plaintiffs, pursuant to §502(a)(3) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1132(a)(3), and Rule 65(a), Federal Rules of Civil Procedure, respectfully request this Court to enter a Preliminary Injunction enjoining Defendants R&M Excavation DB, Inc. and David Bertrand from refusing to permit an audit of the books and records of R&M Excavation DB, Inc.

As grounds therefore, Plaintiffs states as follows:

- 1) Based on the foregoing Complaint and Exhibits, Plaintiffs have exhibited a likelihood of success on the merits.
- 2) Unless enjoined by this Court, the Defendants will continue to ignore their obligations under the terms of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), and of the Restated Agreement and

As this motion is not opposed and, in any event, is meritorious, it is hereby allowed Defendants, and any individual or entity acting in concert with them, shall permit an audit of R&M Excavation DB Inc. books and records from May 1, 2012 to present to determine the

*amount owed to Plaintiffs. Also bond
needed be filed.
W.M. D.V. March 12, 2014*

Declaration of Trust of the Health and Welfare Fund, to which they are bound, to permit auditors to audit their books in order to verify whether they made all required contributions to the appropriate funds.

- 3) There is no adequate remedy at law.
- 4) The Defendants' refusal to permit an audit will result in irreparable injury, loss, and damage to the Plaintiffs.
- 5) The issuance of a preliminary injunction herein will not cause undue inconvenience or loss to the Defendants but will prevent irreparable injury to the Plaintiffs, and would further the public interest.

WHEREFORE, Plaintiffs move this Court to grant a preliminary injunction compelling the Defendants and their agents to permit an audit of R&M Excavation DB, Inc.'s books and records for the period May 1, 2012 to the present to determine the amount, if any, Defendants owe the Plaintiffs. Plaintiffs further request that they be excused from posting a bond.

Respectfully submitted,

GINA M. ALONGI, as she is
ADMINISTRATOR, INTERNATIONAL
UNION OF OPERATING ENGINEERS
LOCAL 4 HEALTH AND WELFARE,
PENSION, AND ANNUITY AND
SAVINGS FUNDS, *et al.*,

By their attorneys,

/s/Gregory A. Geiman

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Dated: August 14, 2014

CERTIFICATE PURSUANT TO LOCAL RULE 7.1(A)(2)

I hereby certify that, upon information and belief, the Defendant in the above-captioned matter is not presently represented by counsel.

/s/ Gregory A. Geiman
Gregory A. Geiman

CERTIFICATE OF SERVICE

This is to certify that a copy of the above Motion for Preliminary Injunction to Obtain Audit has been filed through the ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent by first class mail, postage prepaid, to those indicated as non-registered NEF participants on this 14th day of August, 2014.

/s/ Gregory A. Geiman
Gregory A. Geiman, Esq.