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9 UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 GIL CROSTHWAITE, et al., as Trustees of the
12 OPERATING ENGINEERS HEALTH AND
WELFARE TRUST FUND FOR NORTHERN
13 CALIFORNIA; et al.,

14 Plaintiffs,
v.

15 R.E. SERRANO, INC., and RICKY
16 SERRANO,

17 Defendants.

Case No.: C07-1697 MMC

**JUDGMENT PURSUANT TO
STIPULATION**

18 IT IS HEREBY STIPULATED by and between the parties hereto, that Judgment may be
19 entered in the within action in favor of the plaintiffs and against defendants R.E. SERRANO,
20 INC., a California Corporation, and RICKY SERRANO, individually as follows:
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22 1. Defendants entered into a valid collective bargaining agreement with the
23 Operating Engineers Local 3 (hereinafter "Bargaining Agreement"). This Bargaining Agreement
24 has continued in full force and effect to the present time.

25 2. This action was filed because Defendants became indebted to the Trust Funds for
26 amounts due and owing for unpaid contributions which continued through hours worked for
27 Defendants in September, 2007, under the terms of the Collective Bargaining Agreement and
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Trust Agreements. Those contributions were recently received, leaving balances due to Plaintiffs as follows:

12% p/d interest (to dates paid)	\$16,261.36
Amounts found due on Audit	\$2,456.55
Audit Costs	\$2,068.51
Fees/Costs (8/28/07-10/16/07)	\$4,485.16
	<u>\$25,271.68</u>
15% Liquidated Damages to 8/07	\$51,446.86
8/07	\$6,470.40
9/07	<u>\$3,899.14</u>
	<u>\$61,816.40</u>
	<u>\$87,088.08</u>

3. Plaintiffs agree to conditionally waive liquidated damages in the amount of \$61,816.40 as shown above, on the condition that Defendants timely and fully pay all amounts due hereunder, including October, 2007 contributions to be timely paid on or before November 25, 2007

4. Defendants shall conditionally pay the amount of **\$25,271.68**, as follows:

(a) On or before **December 26, 2007**, defendants shall pay **\$5,204.00** to Plaintiffs. On or before the **25th of every month** thereafter for a period of 10 months (through October 25, 2008), defendants shall pay to plaintiffs **\$2,602.00** per month. Defendants shall have the right to increase the monthly payments at any time, which can be made by joint check, if endorsed by defendants prior to submission to plaintiffs.

(b) Payments shall be applied first to unpaid interest at the rate of 12% per annum on the unpaid audit principal balance and liquidated damages, in accordance with the Collective Bargaining Agreement and plaintiffs' Trust Agreements.

(c) Payments shall be made to the Operating Engineers Trust Funds, and delivered to Muriel B. Kaplan, Saltzman & Johnson Law Corporation, 120 Howard Street, Suite 520, San Francisco, CA 94105 **on or before the 25th of each month as stated above**, or to such other address as may be specified by plaintiffs. In the event that any check is not timely submitted

1 or submitted by defendants but fails to clear the bank, or is unable to be negotiated for any reason,
2 this shall be considered to be a default on the Judgment entered. If this occurs, plaintiffs shall
3 make a written demand to defendants to prove or make said payment by faxing notice to Ricky
4 Serrano at 925-957-8121 and 925-944-9387. Default will only be cured by the issuance of a
5 replacement, *cashier's check*, delivered to Saltzman and Johnson Law Corporation within seven
6 (7) days of the date of the notice from plaintiffs. If defendants elect to cure said default, and
7 plaintiffs elect to accept future payments, all such payments shall be made by cashier's check if the
8 default was caused by a failed check. In the event default is not cured, all amounts remaining due
9 hereunder shall be due and payable on demand by plaintiffs.

11 5. Payment of contributions is due on the 15th of each month pursuant to the Master
12 Agreement for Northern California between Operating Engineers Local Union No. 3 and EUCA,
13 'Fringe Benefits,' Section 12.01.00. Beginning with contributions due for hours worked by
14 defendants' employees during the month of October, 2007, due on November 15, 2007 and
15 delinquent if not received by November 25, 2007 and for every month thereafter until this
16 judgment is satisfied, defendants ***shall remain current in contributions*** due to plaintiffs under the
17 current Collective Bargaining Agreement and under all subsequent collective bargaining
18 agreements, if any, and the Declarations of Trust as amended. ***Defendants shall fax a copy of the***
19 ***contribution report for each month, together with a copy of that payment check, to Muriel B.***
20 ***Kaplan at 415-882-9287, prior to sending the payment to the Trust Fund office so that timely***
21 ***receipt can be confirmed.*** Failure by defendants to remain current in contributions shall constitute
22 a default of the obligations under this agreement and the provisions of Paragraph 6 shall apply.
23 Any such unpaid or late paid contributions, together with 15% liquidated damages and 12% per
24 annum interest accrued on the total contributions and liquidated damages, shall be added to and
25 become a part of this Judgment and subject to the terms herein. Plaintiffs reserve all rights
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1 available under the applicable Bargaining Agreement and Declarations of Trust of the Trust Funds
2 for collection of current and future contributions and the provisions of this agreement are in
3 addition thereto.

4 6. Prior to the last payment pursuant to this Stipulation, plaintiffs shall advise
5 defendants in writing, of any additional amounts owed pursuant to this Stipulation, which shall
6 include, but not be limited to, any additional attorneys fees and costs incurred in this matter. Said
7 amount shall be paid with the last payment, on or before October 25, 2008.

9 7. In the event that defendants fail to make any payment required under Paragraph 4
10 above, or fail to remain current in any contributions under paragraph 5 above, then,

11 (a) The entire balance of **\$87,088.08** plus interest, reduced by principal
12 payments received by Plaintiffs, but increased by any unpaid contributions then due, plus 15%
13 liquidated damages and 12% per annum interest thereon as provided in above paragraph 5 shall be
14 immediately due, together with any additional attorneys' fees and costs under section (d) below.

16 (b) A writ of execution may be obtained against defendants without further
17 notice, in the amount of the unpaid balance, plus any additional amounts under the terms herein,
18 upon declaration of a duly authorized representative of the plaintiffs setting forth any payment
19 theretofore made by or on behalf of defendant and the balance due and owing as of the date of
20 default. Defendants specifically consent to the authority of a Magistrate Judge for all proceedings,
21 including, but not limited to, plaintiffs' obtaining a writ of execution herein.

23 (c) Defendants waive notice of entry of judgment and expressly waive all rights
24 to stay of execution and appeal. The declaration or affidavit of a duly authorized representative of
25 plaintiffs as to the balance due and owing as of the date of default shall be sufficient to secure the
26 issuance of a writ of execution, without further notice to defendants.

1 (d) Defendants shall pay all additional costs and attorneys' fees incurred by
2 plaintiffs in connection with collection and allocation of the amounts owed by defendants to
3 plaintiffs under this Stipulation.

4 8. Any failure on the part of the plaintiffs to take any action against defendants as
5 provided herein in the event of any breach of the provisions of this Stipulation shall not be deemed
6 a waiver of any subsequent breach by the defendants of any provisions herein.

7 9. Plaintiffs specifically reserve all rights to bring a subsequent action against
8 defendants for the collection of any additional contribution delinquencies found to be due for the
9 hours worked during the periods preceding the date of this Stipulation. Defendants specifically
10 waive the defense of the doctrine of res judicata in any such action.

11 10. In the event of the filing of a bankruptcy petition by either or both of the
12 defendants, the parties agree that any payments made by defendants pursuant to the terms of this
13 judgment, shall be deemed to have been made in the ordinary course of business as provided under
14 11 U.S.C. Section 547(c)(2) and shall not be claimed by defendants as a preference under 11
15 U.S.C. Section 547 or otherwise. Defendants nevertheless represent that no bankruptcy filing is
16 anticipated.

17 11. Should any provision of this Agreement be declared or determined by any court of
18 competent jurisdiction to be illegal, invalid, or unenforceable, the legality, validity, and
19 enforceability of the remaining parts, terms or provisions shall not be affected thereby and said
20 illegal, unenforceable or invalid part, term, or provision shall be deemed not to be part of this
21 Agreement.

22 12. Defendants each represent and warrant that they have had the opportunity to be or
23 have been represented by counsel of their own choosing as to the terms and conditions set forth
24 herein, that they have read this Agreement with care and are fully aware of and understand that
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1 they enter into this Agreement voluntarily.

2 13. This Agreement may be executed in any number of counterparts and by facsimile,
3 each of which shall be deemed an original and all of which shall constitute together one and the
4 same instrument.

5 Dated: November 30, 2007

R.E. SERRANO, INC.

7 By: _____/s/_____
8 Its: CEO/President

9 Dated: November 30, 2007

RICKY SERRANO

11 _____/s/_____
12 Individually

13 Dated: December 5, 2007

OPERATING ENGINEERS LOCAL 3
TRUST FUNDS

16 _____/s/_____
17 Wayne McBride

18 Dated: December 5, 2007

SALTZMAN & JOHNSON LAW CORPORATION

21 _____/s/_____
22 Muriel B. Kaplan
Attorneys for Plaintiffs

23 Approved as to form.
24 Dated November 30, 2007

SIMPSON, GARRITY & INNES

25 _____/s/_____
26 By: Paul V. Simpson

IT IS SO ORDERED.

27 Dated: _____ December 6 _____, 2007


UNITED STATES DISTRICT COURT JUDGE