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11 **UNITED STATES DISTRICT COURT**
 12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
 13 **(San Jose Division)**

14 **SACRAMENTO AREA ELECTRICAL**
 15 **WORKERS HEALTH & WELFARE**
 16 **TRUST; SACRAMENTO AREA**
 17 **ELECTRICAL WORKERS PENSION**
 18 **TRUST; SACRAMENTO AREA**
 19 **ELECTRICAL WORKERS JOINT**
 20 **APPRENTICESHIP & TRAINING**
 21 **TRUST; SACRAMENTO AREA**
 22 **ELECTRICAL WORKERS LABOR**
 23 **MANAGEMENT COOPERATION**
 24 **COMMITTEE FUND; SACRAMENTO**
 25 **AREA ELECTRICAL WORKERS**
 26 **CONTRACT ADMINISTRATION FUND;**
 27 **BOB WARD, as trustee of the above trusts**
 28 **except for the SACRAMENTO AREA**
ELECTRICAL WORKERS PENSION
TRUST; JEFF STORY, as trustee of the
SACRAMENTO AREA ELECTRICAL
WORKERS PENSION TRUST;
NATIONAL ELECTRICAL BENEFIT
FUND; and INTERNATIONAL
BROTHERHOOD OF ELECTRICAL
WORKERS LOCAL UNION NO. 340
Plaintiffs,

Case No.
COMPLAINT

v.

TENNYSON ELECTRIC, INC.,
Defendant.

1 Plaintiffs allege:

2 I.

3 JURISDICTION AND PARTIES

4 1. Jurisdiction. This is an action to collect unpaid contributions to multi-employer benefit plans
5 pursuant to a Collective Bargaining Agreement. It is also an action to enforce the terms of a multi-
6 employer benefit Trust Agreement, specifically the terms requiring an employer to make
7 contributions to the Plaintiff. Jurisdiction is pursuant to the Employee Retirement Income Security
8 Act of 1974 ("ERISA"), 29 U.S.C. § 1132(a), (e) and (g), 29 U.S.C. § 1145 and the Labor-
9 Management Relations Act ("LMRA"), 29 U.S.C. § 185.
10

11 2. Venue. Venue is appropriate in this District as the plaintiff plans are administered in
12 this District (Santa Clara County), and the breach took place in this District; 29 U.S.C. § 1132(e)(2).
13

14 3. Parties. Plaintiff INTERNATIONAL BROTHERHOOD OF ELECTRICAL
15 WORKERS LOCAL UNION NO. 340 (hereafter referred to as the "Union" or "IBEW Local 340")
16 is a labor union and the collective bargaining agent for electricians and apprentice electricians
17 employed by Defendant.

18 4. Plaintiffs SACRAMENTO AREA ELECTRICAL WORKERS HEALTH &
19 WELFARE TRUST ("Health & Welfare Trust"), SACRAMENTO AREA ELECTRICAL
20 WORKERS PENSION TRUST ("Pension Trust"), and SACRAMENTO AREA ELECTRICAL
21 WORKERS JOINT APPRENTICESHIP & TRAINING TRUST ("JATC ") will be collectively
22 referred to as the "Trusts." Each of the Trusts is a multi-employer employee benefit plan pursuant to
23 ERISA, 29 U.S.C. § 1002(3), (37) and 29 U.S.C. § 1132(d)(1) and jointly trusted employee benefit
24 trust pursuant to the LMRA, 29 U.S.C. § 186(c)(5).
25

26 5. Plaintiff SACRAMENTO AREA ELECTRICAL WORKERS CONTRACT
27 ADMINISTRATION FUND ("Contract Administration Fund") is a further beneficiary of the
28

1 collective bargaining agreement¹ that has been entered into by the Sacramento Electrical Contractors
2 Association and IBEW Local 340.

3 6. Plaintiffs NATIONAL ELECTRICAL BENEFIT FUND (“NEBF”) and
4 SACRAMENTO AREA ELECTRICAL WORKERS LABOR MANAGEMENT COOPERATION
5 COMMITTEE FUND (“LMCC”) are jointly managed funds pursuant to the Labor Management
6 Cooperation Act of 1978, 29 U.S.C. § 141 et seq.

7
8 7. Plaintiffs IBEW Local 340, Contract Administration Fund, and NEBF will be
9 collectively referred to as the “Related Entities.”

10 8. Plaintiff BOB WARD, is a trustee and fiduciary of the Trusts set forth in Paragraph 4,
11 except the Pension Trust, and is also the Business Manager of the Union. As such, Mr. Ward has the
12 duty, jointly exercised with the other Trustees of those funds, to administer the Trusts for the
13 exclusive benefit of the covered employees in accordance with the Labor Management Relations Act
14 (“LMRA”) § 302(c)(5), 29 U.S.C. § 186(c)(5), ERISA, and the terms of each of the Trusts' written
15 Trust Agreements and the CBA. That fiduciary duty includes the collection of unpaid employer
16 contributions and related losses.

17
18 9. Plaintiff JEFF STORY is a trustee and fiduciary of the Pension Trust. As such, Mr.
19 Story has the duty, jointly exercised with the other Trustees of those funds, to administer the Trusts
20 for the exclusive benefit of the covered employees in accordance with the Labor Management
21 Relations Act (“LMRA”) § 302(c)(5), 29 U.S.C. § 186(c)(5), ERISA, and the terms of each of the
22 Trusts' written Trust Agreements and the CBA. That fiduciary duty includes the collection of unpaid
23 employer contributions and related losses.
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25
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27

28 ¹ Labeled the “Inside Wireman’s Agreemeent.”

1 17. Defendant has failed to pay the required contributions to the Trusts and Related
2 Entities during the relevant period of the statute of limitations pursuant to the appropriate CBA
3 and/or Trust Agreement(s). See also, 29 U.S.C. § 1132(g).

4 18. Defendant also owes liquidated damages for the outstanding contributions.

5 19. The CBA and the applicable Trust Agreement(s) require all employers, upon request,
6 to submit to an audit by the Trusts' auditor. The purpose of the audit is to ensure employers are
7 making all required fringe benefit contributions timely and in full.

8 20. Defendant has refused to submit to an audit by the Trusts' auditor, as required by the
9 CBA and/or Trust Agreement(s).

10
11 III.

12 FIRST CLAIM

13 (ERISA - 29 U.S.C. § 1145)

14 21. Plaintiffs incorporate by reference and reallege the paragraphs above as if set out in
15 full.

16 22. Jurisdiction. This is an action to collect unpaid contributions found owing to a multi-
17 employer benefit plan pursuant to the terms of the Trust Agreement(s) and the Collective Bargaining
18 Agreement. Jurisdiction is pursuant to ERISA, 29 U.S.C. §§ 1132(a), (e) and (g) and § 1145.

19 23. Defendant' actions constitute a failure of an employer to make contributions to a
20 multi-employer plan, as well as a breach of fiduciary duty owed pursuant to 29 U.S.C. § 1145.

21 24. Plaintiffs are entitled to judgment for all unpaid contributions, liquidated damages,
22 prejudgment interest, and reasonable attorneys' fees and costs pursuant to 29 U.S.C. § 1132(g)(2).

23 IV.

24 SECOND CLAIM

25 (LMRA - 29 U.S.C. § 185)

1 25. Plaintiffs incorporate by reference and reallege the paragraphs above as if set out in
2 full.

3 26. Jurisdiction. This is an action to enforce a collective bargaining agreement pursuant
4 to 29 U.S.C. § 185(a).

5 27. Defendant's failure to pay contributions owing breached the CBA with IBEW Local
6 340 to the detriment of Plaintiffs. Plaintiffs are entitled to damages, liquidated damages, interest,
7 attorneys' fees and costs pursuant to the CBA and Trust Agreement(s).

8 28. Plaintiffs are entitled to pursue this claim as third party beneficiaries to the Trust
9 Agreement(s). *See Schneider Moving & Storage Co. v. Robbins, et al.* (1984) 466 U.S. 364, and
10 *Local 340 Apprenticeship and Training Trust v. Babcock & Wilcox* (9th Cir. 2005) 396 F.3d 1056.
11
12

13
14 THIRD CLAIM

15 (Request for Audit Order)

16 29. Plaintiffs incorporate by reference and reallege the paragraphs above as if set out in
17 full.

18 30. The CBA and the applicable Trust Agreement(s) require all employers, upon request,
19 to submit to an audit by the Trusts' auditor.

20 31. Defendant has refused to cooperate with the Trusts' auditor.

21 32. Plaintiffs are entitled to an order compelling Defendant to cooperate with the Trusts'
22 auditor, to provide the pertinent documents and information, and to submit to an audit. Plaintiffs are
23 also entitled to an order requiring payment of all unpaid contributions, liquidated damages, and
24 prejudgment interest disclosed from said audit.
25

26 VI.

27 PRAYER FOR RELIEF
28

1 WHEREFORE, Plaintiffs pray judgment against Defendant, jointly and severally, as follows:

- 2 1. For unpaid contributions according to proof;
- 3 2. For liquidated damages as a result of Defendant' breach of the CBA and applicable
- 4 Trust Agreement(s) according to proof;
- 5 3. For an order requiring Defendant to cooperate with the Trusts' auditor, to provide the
- 6 pertinent documents and information, and to submit to an audit, as required by the CBA and
- 7 applicable Trust Agreement(s);
- 8 4. For an order requiring Defendant to make payment for all unpaid contributions,
- 9 liquidated damages, and prejudgment interest as determined by said audit;
- 10 5. For prejudgment interest according to proof;
- 11 6. For reasonable attorneys fees and costs of suit and any further amounts according to
- 12 proof;
- 13 7. For such equitable relief as this court deems just and proper;
- 14 8. For such other and further relief as this court deems just and proper.
- 15
- 16
- 17

18 Dated: November 3, 2016

Respectfully submitted,

21 /s/ Wan Yan Ling

22 Wan Yan Ling
23 NEYHART, ANDERSON, FLYNN &
24 GROSBOLL
25 Attorneys for Plaintiff

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27

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Exhibit A

Courthouse News Service

LETTER OF ASSENT - A

In signing this letter of assent, the undersigned firm does hereby authorize Sacramento Electrical Contractors Association (SECA) as its collective bargaining representative for all matters contained in or pertaining to the current and any subsequent approved labor agreement between the

Sacramento Electrical Contractors Association (SECA) and Local Union 0340, IBEW.

In doing so, the undersigned firm agrees to comply with, and be bound by, all of the provisions contained in said current and subsequent approved labor agreements. This authorization, in compliance with the current approved labor agreement, shall become effective on the 3rd day of June, 2015.

It shall remain in effect until terminated by the undersigned employer giving written notice to the Sacramento Electrical Contractors Association (SECA) and to the Local Union at least one hundred fifty (150) days prior to the then current anniversary date of the applicable approved labor agreement.

The Employer agrees that if a majority of its employees authorize the Local Union to represent them in collective bargaining, the Employer will recognize the Local Union as the NLR Section 9(a) collective bargaining agent for all employees performing electrical construction work within the jurisdiction of the Local Union on all present and future jobsites.

In accordance with Orders issued by the United States District Court for the District of Maryland on October 10, 1980, in Civil Action JM-77-1302, if the undersigned employer is not a member of the National Electrical Contractors Association, this letter of assent shall not bind the parties to any provision in the above-mentioned agreement requiring payment into the National Electrical Industry Fund, unless the above Orders of Court shall be stayed, reversed on appeal, or otherwise nullified.

SUBJECT TO THE APPROVAL OF THE INTERNATIONAL PRESIDENT, IBEW

Tennyson Electric, Inc.
Name of Firm
7275 National Drive, Suite A2
Street Address/P.O. Box Number
Livermore, CA 94550
City, State (Abbr.) Zip Code
Federal Employer Identification No. 84-3228931

APPROVED
INTERNATIONAL OFFICE - I.B.E.W.
07/06/2015
Lonnie Stephenson, President
This approval does not make the International a party to this agreement.

SIGNED FOR THE EMPLOYER
BY: [Signature]
NAME: Michael J. Tennyson
TITLE/DATE: Pres./Vp. 6-3-15

SIGNED FOR THE UNION 0340, IBEW
BY: [Signature]
NAME: Tom Okumura
TITLE/DATE: Business Manager 6/17/15

- INSTRUCTIONS (All items must) be completed in order for assent to be processed)
1 NAME OF CHAPTER OR ASSOCIATION
2 TYPE OF AGREEMENT
3 LOCAL UNION
4 EFFECTIVE DATE
5 EMPLOYER'S NAME & ADDRESS
6 FEDERAL EMPLOYER IDENTIFICATION NO.
7 SIGNATURES
8 SIGNER'S NAME

A MINIMUM OF FIVE COPIES OF THE JOINT SIGNED ASSENTS MUST BE SENT TO THE INTERNATIONAL OFFICE FOR PROCESSING. AFTER APPROVAL, THE INTERNATIONAL OFFICE WILL RETAIN ONE COPY FOR OUR FILES, FORWARD ONE COPY TO THE IBEW DISTRICT VICE PRESIDENT AND RETURN THREE COPIES TO THE LOCAL UNION OFFICE. THE LOCAL UNION SHALL RETAIN ONE COPY FOR THEIR FILES AND PROVIDE ONE COPY TO THE SIGNATORY EMPLOYER AND ONE COPY TO THE LOCAL NECA CHAPTER.