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

**SACRAMENTO AREA ELECTRICAL
WORKERS HEALTH & WELFARE
TRUST; SACRAMENTO AREA
ELECTRICAL WORKERS PENSION
TRUST; SACRAMENTO AREA
ELECTRICAL WORKERS JOINT
APPRENTICESHIP & TRAINING
TRUST; SACRAMENTO AREA
ELECTRICAL WORKERS LABOR
MANAGEMENT COOPERATION
COMMITTEE FUND; SACRAMENTO
AREA ELECTRICAL WORKERS
CONTRACT ADMINISTRATION FUND;
BOB WARD, as trustee of the above trusts
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,**

v.

**TENNYSON ELECTRIC, INC.,

Defendant.**

**Case No.
COMPLAINT**

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

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

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 trusteesd 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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27

28 ¹ Labeled the "Inside Wireman's Agreemeent."

1 10. Upon information and belief, Defendant TENNYSON ELECTRIC, INC. (hereinafter
2 referred to as “Defendant”) is a corporation doing business under California entity # C1760533 and
3 California Contractor’s State License # 717998.

4 11. Defendant is engaged in the electrical wiring business in and around Sacramento
5 County, California and as such has been an employer “engaged in an industry or activity affecting
6 commerce” within the meaning of 29 U.S.C. § 152 and 29 U.S.C. §§ 1002-1003.

8 II.

9 FACTS

10 12. A Collective Bargaining Agreement labeled the “Inside Wireman’s Agreement”
11 (hereinafter referred to as the “CBA”) has been entered into by the Sacramento Electrical
12 Contractors Association (“SECA”) and IBEW Local 340.

13 13. Defendant is signatory to the CBA and is therefore bound by all provisions contained
14 in the most recent version of the CBA. A true and correct copy of the Letter of Assent signed by
15 Defendant is attached hereto as “**Exhibit A.**”

16 14. Any employer who agrees to be bound to the CBA also agrees to be bound to the
17 applicable Trust Agreement(s).

18 15. The terms of the CBA require Defendant to submit timely monthly transmittal reports
19 and contributions to the Trusts and Related Entities for fringe benefits for covered employees.

20 16. Under both the CBA and the Trust Agreement(s), an employer who fails to submit
21 timely monthly fringe benefit contributions to the Trusts and Related Entities is liable to the Trusts
22 and Related Entities for all unpaid contributions, liquidated damages on the unpaid principal, interest
23 on the delinquent amount accrued and liquidated damages, and attorneys’ fees and collection costs.
24 See also, 29 U.S.C. § 1132(g).
25
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27
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III.

FIRST CLAIM

(ERISA - 29 U.S.C. § 1145)

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

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

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

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

IV.

SECOND CLAIM

(LMRA - 29 U.S.C. § 185)

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

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

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

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

THIRD CLAIM

(Request for Audit Order)

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

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

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

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

VI.

PRAYER FOR RELIEF

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

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

Dated: November 3, 2016

Respectfully submitted,

/s/ Wan Yan Ling
Wan Yan Ling
NEYHART, ANDERSON, FLYNN &
GROSBOLL
Attorneys for Plaintiff

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 Inside Wireman 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 NLRB 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 81-77-1302, 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 (Abb.) Zip Code

Federal Employer Identification No. 84-3228931

SIGNED FOR THE EMPLOYER

BY:

NAME:

TITLE/DATE

SIGNED FOR THE UNION 0340, IBEW

BY:

NAME: Tom Okumura

TITLE/DATE: Business Manager / 6/7/15

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.

INSTRUCTIONS (All items must be completed in order for Assent to be processed)

1 NAME OF CHAPTER OR ASSOCIATION

Insert full name of NECA Chapter or Contractors Association involved

2 TYPE OF AGREEMENT

Insert type of agreement. Example: Inside, Outside Utility, Outside Commercial, Outside Telephone, Residential, Motor Shop, Sign, Tree Trimming, etc. The Local Union must obtain a separate assent to each agreement the employer is assenting to.

3 LOCAL UNION

Insert Local Union Number.

4 EFFECTIVE DATE

Insert date that the assent for this employer becomes effective. Do not use agreement date unless that is to be the effective date of this Assent.

5 EMPLOYER'S NAME & ADDRESS

Print or type Company name & address.

6 FEDERAL EMPLOYER IDENTIFICATION NO.

Insert the identification number which must appear on all forms filed by the employer with the Internal Revenue Service.

7 SIGNATURES

8 SIGNER'S NAME

Print or type the name of the person signing the Letter of Assent. International Office copy must contain actual signature not reproduced of a Company representative as well as a Local Union officer.

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.