

1 TRACY L. HOLTZ, Bar No. 176928
2 OPERATING ENGINEERS LOCAL UNION NO. 3 TRUST FUNDS- MULTI-REPAIRS
3 1620 South Loop Road
4 Alameda, CA 94502
5 (510) 748-7474

6 Attorney for Plaintiffs

7 UNITED STATES DISTRICT COURT
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA
9 (SAN FRANCISCO HEADQUARTERS)

10 KEN WALTERS, DON DOSER, in their)
11 respective capacities as Trustees of the)
12 OPERATING ENGINEERS HEALTH AND)
13 WELFARE TRUST FUND FOR)
14 NORTHERN CALIFORNIA; PENSION)
15 TRUST FUND FOR OPERATING)
16 ENGINEERS; PENSIONED OPERATING)
17 ENGINEERS HEALTH AND WELFARE)
18 FUND; OPERATING ENGINEERS)
19 ANNUITY TRUST FUND; OPERATING)
20 ENGINEERS AND PARTICIAPTING)
21 EMPLOYERS PRE-APPRENTICSHIP,)
22 APPRENTICE AND JOURNEYMEN)
23 AFFIRMATIVE ACTION TRAINING)
24 FUND; OPERATING ENGINEERS)
25 CONTRACT ADMINISTRATION TRUST)
FUND; OPERATING ENGINEERS)
MARKET PRESERVATION TRUST FUND;)
and OPERATING ENGINEERS INDUSTRY)
STABILIZATION TRUST FUND,)

Plaintiffs,

vs.

SCHULHAUSER ENGINEERING, INC., a)
suspended California Corporation; and)
STEVEN PAUL SCHULHAUSER,)
individually,)

Defendants.

Case No. 2875

**COMPLAINT FOR DECLARATORY
RELIEF, BREACH OF CONTRACT,
DAMAGES AND EQUITABLE RELIEF**

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COMPLAINT FOR DECLARATORY RELIEF, BREACH OF CONTRACT, DAMAGES AND EQUITABLE RELIEF;

1 Plaintiffs complain of the Defendants and for causes of action allege against each of
2 them:

3
4 **JURISDICTION UNDER ERISA AND LMRA**

5 **I.**

6 This action arises under, and is brought pursuant to, Section 502 of the Employee
7 Retirement Income Security Act, as amended (ERISA), 29 U.S.C. Section 1132, which grants
8 district courts exclusive jurisdiction to hear civil actions brought by a fiduciary. See 29 U.S.C.
9 Section 1132(e)(1). Further, Section 502(a)(3) of ERISA provides that a fiduciary has standing
10 to enforce any ERISA provisions. Plaintiffs Ken Walters and Don Doser, Trustees and Co-
11 Chairmen of the Operating Engineers Health and Welfare Trust Funds for Northern California;
12 Pension Trust Fund for Operating Engineers; Pensioned Operating Engineers Health and Welfare
13 Fund; and Operating Engineers Vacation and Holiday Plan (“Trust Funds”), have the authority to
14 bring actions on behalf of all Trustees. The above-named Trustees, in their respective capacities
15 as Trustees of the aforesaid Trust Funds and on behalf of all the Trustees, have standing to bring
16 this action and to enforce any ERISA provisions, as they are fiduciaries. Therefore, this Court
17 has jurisdiction under ERISA over this action.

18 **II.**

19 This action also arises under and is brought pursuant to Section 301 of the Labor
20 Management Relations Act (LMRA), 29 U.S.C. Section 185, which extends to all “[s]uits for
21 violation of contracts between an employer and a labor organization representing employees in
22 an industry affecting commerce” Plaintiffs are seeking to enforce Defendant’s obligation to
23 contribute fringe benefits to the Trust Funds under the collective bargaining agreement between
24 Defendant SCHULHAUSER ENGINEERING, INC. and Operating Engineers Local Union No.
25 3 of the International Union of Operating Engineers, AFL-CIO, and the Trust Agreements

COMPLAINT FOR DECLARATORY RELIEF, BREACH OF CONTRACT, DAMAGES AND EQUITABLE
RELIEF;

1 incorporated into that collective bargaining agreement by reference therein. Therefore, this
2 Court has jurisdiction under LMRA over this action.

3 **INTRADISTRICT ASSIGNMENT**

4 **III.**

5 Assignment to either the San Francisco or Oakland Divisions would be proper under
6 Civil L.R. 3.2(15) because: any contributions found due will be payable in San Francisco,
7 California; the principal office of the Plaintiffs is in Alameda County; and a substantial part of
8 the events or omissions respecting the requirement of the Defendant to submit timely
9 contributions and reports occurred in San Francisco and Alameda counties.
10

11 **PARTIES**

12 **IV.**

13 At all times material herein, Plaintiffs Ken Walters and Don Doser have been, and
14 currently are, Trustees and Co-Chairman and Chairman, respectively, of the Trust Funds with the
15 authority to bring actions on behalf of all Trustees. These individuals are named fiduciaries of
16 the Trust Funds, within the meaning of Section 402(a) of ERISA, 29 U.S.C. Section 1102(a) and
17 are the administrators of the Trust Funds and their respective plans. Any reference to "Board of
18 Trustees" hereinafter refers to all of the Trustees for the Trust Funds. At all time material herein,
19 the Trust Funds are established under, and pursuant to, Section 402 of ERISA, 29 U.S.C. Section
20 1103, and Section 302 of LMRA, 29 U.S.C. Section 186. At all times material herein, the Trust
21 Funds, were and now are employee benefit plans created by written trust agreement and
22 collective bargaining, and multi-employer benefit plans within the meaning of Sections 3 and 4
23 of ERISA, 29 U.S.C. Sections 1002 and 1003. Contributions to the Trust Fund are due and
24 payable in San Francisco, California.
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V.

At all material times herein, the Defendants, and each of them, have been employers within the meaning of Section 3(5) of Section 515 of ERISA, 29 U.S.C. Sections 1002(5), 1145 and an employer in an industry affecting commerce within the meaning of Section 301 of the L.M.R.A., 29 U.S.C. Section 185. At all times material herein, the Defendants have been and are engaged in the equipment repair industry in the State of California. Defendant SCHULHAUSER ENGINEERING, INC. ("SCHULHAUSER, INC.") is a suspended California Corporation. Defendant STEVEN PAUL SCHULHAUSER ("STEVEN SCHULHAUSER") is an individual who resides and/or contracts business in California.

FIRST CLAIM FOR RELIEF
(ACTUAL DAMAGES – ERISA)

VI.

The Boards of Trustees have, as one of their purposes, the obligation to ensure that contributions required to be made to said Trust Funds pursuant to collective bargaining agreements are fully and correctly made. The purpose of the respective Trust Funds is to provide health and welfare, vacation, pension and other benefits for operating engineers on whose behalf contributions are made, which benefits are supported by such contributions, and to ensure that employers who are signatories to the collective bargaining agreements referred to herein comply with the terms of said agreements with respect to payments of said contributions to the Funds.

VII.

At all relevant times herein, SCHULHAUSER, INC., has been bound to a written collective bargaining agreement with the Operating Engineers Local Union No. 3 of the International Union of Operating Engineers, AFL-CIO, a labor organization within the meaning of LMRA Section 301 29 U.S.C. Section 185 ("Collective Bargaining Agreement"). A copy of

1 the Collective Bargaining Agreement is attached hereto as Exhibit "A". STEVEN
2 SCHULHAUSER, is the alter ego of SCHULHAUSER, INC. as the term is understood under
3 applicable law. STEVEN SCHULHAUSER and SCHULHAUSER, INC. are a single employer.
4 STEVEN SCHULHAUSER continued to conduct business individually and using the name
5 SCHULHAUSER, INC. after the corporate powers of SCHULHAUSER, INC. were suspended
6 pursuant to California Revenue and Tax Code Section 23301.

7 **VIII.**

8 STEVEN SCHULHAUSER is the successor of SCHULHAUSER, INC., as that term is
9 understood under federal labor law. STEVEN SCHULHAUSER is a mere continuation of
10 SCHULHAUSER, INC. STEVEN SCHULHAUSER had notice of SCHULHAUSER, INC.'S
11 liability for fringe benefit contributions and its collective bargaining agreement with Operating
12 Engineers Local Union No. 3 when he took over the operations of SCHULHAUSER, INC.,
13 when its corporate powers were suspended.

14 **IX.**

15 By agreeing to be bound to the Collective Bargaining Agreement, SCHULHAUSER,
16 INC. and its alter ego/successor STEVEN SCHULHAUSER, promised to contribute and pay the
17 Trust Funds the hourly amounts required by said Agreements for each hour paid for or worked
18 by any of its employees who performed any work covered by the Collective Bargaining
19 Agreement, and to be subject to and bound by all of the terms, provisions and conditions of the
20 Trust Agreements.

21 **X.**

22 The Defendants, and each of them, have failed, neglected and refused to pay timely fringe
23 benefit contributions in the amount of \$22,221.65 and liquidated damages and interest in the
24 amount of \$150,810.15 as required by the Master Agreement and Trust Agreements.
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XV.

Pursuant to the terms of the Trust Agreements, incorporated by reference into the Collective Bargaining Agreement, Plaintiffs are entitled to payment of delinquent contributions in the amount of \$22,221.65 and liquidated damages and interest in the amount of \$150,810.15 from the Defendants based on covered work performed by the Defendant’s employees. Plaintiffs are also entitled to prejudgment interest.

THIRD CLAIM FOR RELIEF
(DAMGAGES AND EQUITABLE RELIEF FOR BREACH OF FIDUCIARY DUTY – ERISA)

XVI.

Plaintiffs incorporate by this reference each and every allegation contained in Paragraph I through XII.

Defendants, in agreeing to the terms and conditions of the aforementioned Trust Agreements, assumed a fiduciary duty to the Trust Funds, which required the Defendants to submit timely and accurate reports of hours worked or amounts due, together with payments to the Trust Funds. The Defendants exercised control over any contributions due, which are assets of the Trust Funds, and the Defendants were, and are, fiduciaries as defined by ERISA Section 3(21), 29 U.S.C. Section 1002(21).

XVII.

The actions of the Defendants complained of herein constitute a violation of fiduciary duties defined by ERISA, 29 U.S.C. Sections 1001 et seq.

XVIII.

Pursuant to the Collective Bargaining Agreement, Trust Agreements, and ERISA, the Defendants are liable to Plaintiffs for all interest on the unpaid contributions, liquidated damages, actual damages, attorney’s fees and other collection costs.

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XI.

Plaintiffs are not parties to the collective bargaining agreement and are not entitled to arbitration for the reason that the collective bargaining agreement excludes these provisions from the provisions from the arbitration clause.

XII.

In light of the fact that STEVEN SCHULHAUSER is conducting the same business as SCHULHAUSER, INC. and reporting contributions pursuant to the terms of the Collective Bargaining Agreement, notwithstanding SCHULHAUSER, INC. is a suspended corporation, Plaintiffs are entitled to a judicial determination and declaration that STEVEN SCHULHAUSER is the alter ego and/or successor of SCHULHAUSER, INC., and thereby bound to the collective bargaining agreement with Operating Engineers Local Union No. 3 executed by SCHULHAUSER, INC. in order to resolve the controversy with respect to STEVEN SCHULHAUSER'S liability for the aforementioned unpaid contributions owed to the Trust Funds.

XIII.

Pursuant to Section 502(g)(2) of ERISA, 29 U.S.C. Section 1132(g)(2), Plaintiffs are entitled to all unpaid contributions in the amount of \$22,221.65, interest, liquidated damages in the amount of \$150,810.15 and such other legal or equitable relief as the court deems appropriate. Plaintiffs are also entitled to attorney's fees and costs under Section 502(g)(1) of ERISA, 29 U.S.C. Section (g)(1), and prejudgment interest.

**SECOND CLAIM FOR RELIEF
(ACTUAL DAMAGES – LMRA)**

XIV.

Plaintiffs reallege and incorporate by reference each and every allegation contained in Paragraphs I through XII.

1 **WHEREFORE**, Plaintiffs pray for judgment against the Defendants, and each of them,
2 as follows:

3 1. STEVEN SCHULHAUSER is the alter ego of SCHULHAUSER, INC. as that
4 term is understood under federal law, and thereby bound to the collective bargaining agreement
5 with Operating Engineers Local Union No. 3 executed by Defendant SCHULHAUSER, INC.;

6 2. STEVEN SCHULHAUSER is the successor of SCHULHAUSER, INC., as that
7 term is understood under federal law, and thereby bound to the collective bargaining agreement
8 with Operating Engineers Local Union No. 3 executed by Defendant SCHULHAUSER, INC.;

9 3. That Defendants, and each of them, be ordered to pay to Plaintiffs the sum of
10 \$22,221.65 in unpaid contributions and liquidated damages and interest in the amount of
11 \$150,810.15 owed the Trust Funds;

12 4. That Defendants, and each of them, be ordered to pay to Plaintiffs actual damages
13 according to proof;

14 5. For an Order directing and permanently enjoining the Defendants, and each of
15 them, to submit to Plaintiff Trust Funds, all reports and contributions due and owing by
16 Defendants, and each of them, plus interest, liquidated damages, attorneys' fees, and costs as
17 provided in ERISA §§502(a)(3) and (g)(2), 29 U.S.C. §1132(a)(3), (g)(2);

18 6. For an Order permanently enjoining the Defendants, and each of them, for so long
19 as the Defendants, and each of them, remain obligated to contribute to the Trust Funds, from
20 failing, neglecting, or refusing to submit required monthly contributions reports and payments in
21 a timely fashion as required by the terms of the Collective Bargaining and Trust Agreements and
22 ERISA §§502(a)(3) and (g)(2), 29 U.S.C. §1132(a)(3), (g)(2);

23 7. For prejudgment interest and post judgment interest at the highest legal rate;

24 8. For attorneys' fees, court costs, and other reasonable expenses incurred in
25 connection with this action; and

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COMPLAINT FOR DECLARATORY RELIEF, BREACH OF CONTRACT, DAMAGES AND EQUITABLE
RELIEF;

SEP 30 1986
 CONTRACTS

INDEPENDENT

Northern California Construction Agreement

75870, 24
 Account No.
 495596
 Contractor's License No.

Operating Engineers Local Union No. 3 proposes the following collective bargaining agreement to:

SCHULHAUSER ENGINEERING INC.

Individual Employer (Company Name)				
935 Bradford Way,	Benicia	CA.	94510	(707) 746-1576
Address	City	State	Zip	Telephone Number

SECTION NO. 1 - DEFINITIONS, COVERAGE, RECOGNITION

1. *Union.* The term "Union" as used herein shall mean OPERATING ENGINEERS LOCAL UNION NO. 3 of the International Union of Operating Engineers, AFL-CIO.
2. *Employee.* The term "Employee" as used herein shall mean any person, without regard to race, color, religion, sex, age, national origin or handicap;
 - (a) whose work for an Individual Employer in the area covered by this Agreement falls within the recognized jurisdiction of the Union, or
 - (b) who operates, monitors and controls, maintains, repairs, modifies, assembles, erects, services or each or all of them, power-operated equipment, of the type or kind of power-operated equipment used in the performance of work referred to in (a) above, regardless of whether such power-operated equipment is mechanically, electrically or electronically, hydraulically, automatically or remotely controlled, and
 - (c) who assists or helps in the operation, maintenance, repairing or assembling, erecting or servicing of such power-operated equipment of the type or kind of equipment used in the performance of work referred to in (a) above, and who qualifies to register in a Job Placement Center, provided that the foregoing shall not apply to superintendents, assistant superintendents, general foremen, foremen, timekeepers, messenger boys, guards, confidential employees, office help, inspectors, and person specifically excluded elsewhere in this Agreement.
3. This Agreement shall cover and apply to all activities of the Individual Employer in the area covered by this Agreement falling within the recognized jurisdiction of the Union, including, but not limited by inference or otherwise, to building construction, demolition, site clearing, pipelines, oil or gas refineries (excluding the falling and removal of merchantable timber by the purchaser of the merchantable timber), work covered by Section 13.00.00, Steel Fabricators and Erectors, which work and equipment shall be covered by Section 13.00.00, Steel Fabricators and Erectors, and work covered by Section 14.00.00, Piledriving, which work and equipment shall be covered by Section 14.00.00, Piledriving. It shall also apply to all maintenance, modification and repair work and facilities, on-site or off-site, of an Individual Employer in the area covered by this Agreement, except an off-site repair or maintenance facility with respect to which the Individual Employer is in a bona fide collective bargaining relationship with a labor organization covering such Individual Employer's off-site maintenance and repair facility at the time the Individual Employer becomes a party to, or covered by, this Agreement.
4. This Agreement shall cover and apply to all Employees.
5. *Coverage.* This Agreement shall cover and apply to Northern California, which term means that portion of the State of California above the northerly boundary of Kern County, the northerly boundary of San Luis Obispo County, and the westerly boundaries of Inyo and Mono Counties.
6. Because employees in the construction industry frequently work for many different Individual Employers in the course of any given twelve-month-period, and because of the broad community of interest which this cross-flow of employees creates, particularly through the operation of the Job Placement Regulations, the Union, Employer and all Individual Employers bound by terms and provisions of this Agreement recognize that all Employees who perform work historically, or which may hereafter come, within the jurisdiction of the Union are members of a single industry-wide multi-employer unit of Employees.
7. In the event the Individual Employer forms or participates in a corporation, association, partnership, joint venture or firm for the purpose of performing work covered by this Agreement and which is controlled directly or indirectly by the Individual Employer, the Individual Employer shall notify the Union in writing the day following the formation or participation of the name and address of such entity. Any Individual Employer who fails to give such notification will pay into the Operating Engineers' Pension Trust Fund an amount not to exceed the wages, straight time and overtime, and fringe benefits that would have been paid by the Individual Employer if the work was performed by him, plus twenty-five percent (25%) of the total amount not as a penalty but by way of liquidated damages.
8. The parties hereby waive any right that they may have to repudiate this Agreement during the term of the Agreement or during the term of any extension, modification or amendment to this Agreement.
9. The Individual Employer covered hereby recognizes and acknowledges OPERATING ENGINEERS LOCAL UNION NO. 3 of the International Union of

- Operating Engineers, AFL-CIO, as the exclusive collective bargaining representative of all Employees covered by this Agreement.
10. In the event of a sale and/or transfer of the Individual Employer's business to another owner, the Individual Employer agrees to pay all fringe benefit contributions due and owing, if any, prior to such sale, or make arrangements, in writing, with the Trust Fund prior to such sale to make payment from the proceeds of said sale.
11. In the event of bankruptcy, the Individual Employer agrees that with respect to any fringe benefit payments owed the Trust Funds, a promissory note shall be executed by the Individual Employer with the Trust Funds providing for full payment of said fringe benefits notwithstanding the Individual Employer's bankruptcy.

SECTION NO. 2 - MASTER AGREEMENTS INCORPORATED

All of the provisions of the current Master Agreement between the Union and the Associated General Contractors of California, Inc., including the Job Placement Regulations and any amendment or amendments thereto excluding 02.08.04, 07.10.04(7), 12.09.00, 12.09.01, 12.09.02, 18.03.04, 26.01.00 and 26.03.00, which are specifically excluded from this Agreement, are incorporated herein as if set forth in full herein. Provided, however, that with respect to 19.00.00 of said Master Agreement, any decision under 19.00.00 involving the meaning of the Agreement resulting in the amendment of that Agreement, shall control, and shall be given full effect under this Agreement.

SECTION NO. 3 - DISPUTES

Settlement of any disputes under this Agreement shall be in accordance with Section 18.00.00 of the current Master Agreement referred to in Section No. 2 above; provided, however, the Individual Employer may utilize a Board of Adjustment Panel selected by the Employer, or arrange for his own Panel.

SECTION NO. 4 - INFORMATION

For the information and convenience of the parties, the substance of certain provisions of the Master Agreement incorporated by reference are reproduced as an Appendix which is attached hereto.

SECTION NO. 5 - EFFECTIVE AND TERMINATION DATES

This Agreement shall, if a renewal Agreement, be retroactive to the effective date of the current Master Agreement, and if not a renewal Agreement, shall be effective the day following the signing of this Agreement. The Individual Employer agrees to be bound to the wages, hours and all other terms and conditions of future Master Agreements and any amendment(s) thereto; provided, however, that in the event either party desires to terminate this Agreement, they may do so during the period of sixty (60) to ninety (90) days prior to the expiration of any Master Agreement.

Receipt of copies of the current Master Agreement and amendments to date, and of the other agreements incorporated by reference therein, is hereby acknowledged by the Individual Employer by acceptance of this Agreement.

OPERATING ENGINEERS LOCAL UNION NO. 3 of the International Union of Operating Engineers, AFL-CIO

- /s/ Harold Huston, President
- /s/ William Markus, Recording-Corresponding Secretary
- /s/ T.J. Stapleton, Business Manager
- /s/ Business Representative: Harold Huston
Agent No. 9733

If this proposed Agreement is satisfactory, please sign accepting the same at the place provided below:

Accepted this 17th day of September, 1986

Jean Schulhauser
 Individual Employer's Name and Title

EXHIBIT A