

1 Ronald L. Richman, SBN 139189  
 Susan J. Olson, SBN 152467  
 2 BULLIVANT HOUSER BAILEY PC  
 601 California Street, Suite 1800  
 3 San Francisco, California 94108  
 Telephone: 415.352.2700  
 4 Facsimile: 415.352.2701  
 E-Mail: ron.richman@bullivant.com  
 5 E-Mail: susan.olson@bullivant.com

6 Attorneys for Plaintiffs

7  
 8 UNITED STATES DISTRICT COURT  
 9 NORTHERN DISTRICT OF CALIFORNIA

10 BOARD OF TRUSTEES OF THE CEMENT  
 MASONS HEALTH AND WELFARE TRUST  
 11 FUND FOR NORTHERN CALIFORNIA;  
 BOARD OF TRUSTEES OF THE CEMENT  
 12 MASONS VACATION-HOLIDAY TRUST  
 FUND FOR NORTHERN CALIFORNIA;  
 13 BOARD OF TRUSTEES OF THE CEMENT  
 MASONS PENSION TRUST FUND FOR  
 14 NORTHERN CALIFORNIA; AND BOARD  
 OF TRUSTEES OF THE CEMENT MASONS  
 15 TRAINING TRUST FUND FOR NORTHERN  
 CALIFORNIA,

Case No.: C 10-00124 JL

**PLAINTIFFS' CASE MANAGEMENT  
 CONFERENCE STATEMENT; ORDER  
 THEREON**

**Date: October 25, 2010**  
**Time: 10:30 a.m.**  
**Ctroom: F, 15<sup>th</sup> Floor,**  
**Hon. James Larson**

16 Plaintiffs,

17 v.

18 KENNETH BERNARD HERRERA dba KB  
 19 CONCRETE,

20 Defendant.

21  
 22 Plaintiffs Cement Masons Trust Funds provide this Court with the following case  
 23 management conference statement.

24 On January 11, 2010 Plaintiffs Cement Masons Trust Funds filed their Complaint for  
 25 Damages for Breach of Collective Bargaining Agreement, To Recover Unpaid Trust Fund  
 26 Contributions and for Breach of Fiduciary Duty ("Complaint") against Defendant Kenneth  
 27 Bernard Herrera. In the Complaint, the Cement Masons Trust Funds seek to recover the  
 28 principal balance of 44,577.35 plus liquidated damages, interest, attorneys' fees and costs.

1 Several attempts were made to serve the Defendant. The attempts were unsuccessful. On  
2 March 16, 2010 Plaintiffs Cement Masons Trust Funds filed a Declaration of Due Diligence  
3 advising this Court of the attempts at service of the original Complaint.

4 On February 12, 2010 Plaintiffs filed their First Amended Complaint for Breach of  
5 Collective Bargaining Agreement, To Recover Unpaid Trust Fund Contributions, Breach of  
6 Fiduciary Duty and For a Mandatory Injunction ("First Amended Complaint"). Once again,  
7 several attempts were made to serve the Defendant. These attempts were unsuccessful. On  
8 March 16, 2010 Plaintiffs filed a Declaration of Due Diligence advising this Court of the  
9 attempts at service of the First Amended Complaint.

10 On May 26, 2010 Plaintiffs filed their Ex Parte Application for Order for Service by  
11 Publication. On June 15, 2010 this Court granted Plaintiffs Ex Parte Application.

12 Plaintiffs prepared the service by Publication with the Fresno Bee. It was submitted on  
13 June 25, 2010. The publication ran for four (4) consecutive weeks, the last day of service being  
14 July 16, 2010. A responsive pleading was due on August 2, 2010. No responsive pleading was  
15 filed and Plaintiffs will proceed in default.

16 On September 2, 2010 the Clerk issued the default of Defendant. Subsequently,  
17 Plaintiffs made efforts to recover the outstanding balance due which would have obviated the  
18 need for further litigation. Plaintiffs were unable to recover the monies and are now able to  
19 proceed with a motion for default judgment. Based on the above, Plaintiffs Cement Masons

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

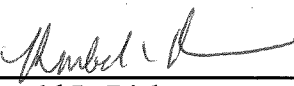
27

28

1 respectfully request that this Court continue the case management conference for 45 days to  
2 allow Plaintiffs to file their motion for default judgment.

3 DATED: August 18, 2010

4 BULLIVANT HOUSER BAILEY PC

5  
6 By   
7 Ronald L. Richman  
8 Susan J. Olson

9 Attorneys for Plaintiffs

10  
11  
12  
13 **ORDER**

14 Pursuant to Plaintiffs Laborers Trust Funds request for continuance of the case  
15 management conference and good cause appearing:

16 IT IS HEREBY ORDERED that the case management conference scheduled for October  
17 27, 2010 shall be continued to December 15, 2010 at 10:30 a.m., Courtroom F, 15<sup>th</sup> Floor.

18 Plaintiff shall submit a Joint Case Management Conference Statement seven (7) days  
19 prior to the new Case Management Conference advising this Court as to the status of this case.

20 DATED: Oct 22, 2010

21 By   
22 HON. JAMES LARSON  
23 UNITED STATES MAGISTRATE JUDGE

24  
25 12893331.1