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6 Attorneys for Plaintiffs

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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

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

16 Plaintiffs,

17 v.

18 KENNETH BERNARD HERRERA dba KB  
19 CONCRETE,

20 Defendant.

Case No.: C 10-00124 JL

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

**Date: January 19, 2010**  
**Time: 10:30 a.m.**  
**Ctroom: F, 15<sup>th</sup> Floor,**  
**Hon. James Larson**

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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 have recovered all the monies that it can, without court  
19 intervention, and request an additional 30 days to file its a motion for default judgment .

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1 Based on the above, respectfully request that this Court continue the case management  
2 conference for 30 days to allow Plaintiffs to attempt to file their motion for default judgment.

3 DATED: January 12, 2011

4 BULLIVANT HOUSER BAILEY PC

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

9 Attorneys for Plaintiffs

10 **ORDER**

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

13 IT IS HEREBY ORDERED that the case management conference scheduled for January  
14 19, 2011 shall be continued to February 23, 2011 at 10:30 a.m., Courtroom F, 15<sup>th</sup> Floor.  
15 Plaintiff shall submit a Joint Case Management Conference Statement seven (7) days prior to  
16 the new Case Management Conference advising this Court as to the status of this case. If a  
17 Motion for Default Judgment is filed on or before the new case management conference date,  
18 the case management conference will be vacated.

19 DATED: January 13, 2011

20  
21 By   
22 HON. JAMES LARSON  
23 UNITED STATES MAGISTRATE JUDGE

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