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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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11 TRUSTEES OF THE BRICKLAYERS  
12 LOCAL NO. 3 PENSION TRUST, et. al.,

13 Plaintiffs,

14 v.

15 KENNETH HUDDLESTON,

16 Defendant.  
17

Case No: 10-1708 JSC

**ORDER GRANTING PLAINTIFFS'  
MOTION TO STRIKE DEFENDANT'S  
ANSWER (Dkt. No. 47)**

18 Now pending before the Court is Plaintiffs' Motion to Strike Defendant's Answer to  
19 Plaintiffs' Second Amended Complaint.<sup>1</sup> (Dkt. No. 47.) Plaintiffs assert that striking  
20 Defendant's answer is justified because Defendant has abandoned defense of this suit by  
21 failing to provide court-ordered discovery. After carefully considering the argument  
22 submitted by Plaintiffs, and in light of Defendant's continued failure to respond, including  
23 failing to respond to Plaintiffs' motion to strike, the Court GRANTS Plaintiffs' motion.

24 **DISCUSSION**

25 When a party "fails to obey an order to provide or permit discovery," the Court may  
26 strike pleadings. Fed. R. Civ. P. 37(b)(2)(A)(iii). On November 3, 2011, Defendant, who  
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28 <sup>1</sup> The parties consented to the jurisdiction of a United States magistrate judge pursuant to 28  
U.S.C. § 636(c). (Dkt. Nos. 4, 26.)

1 represents himself *pro se*, failed to appear at a scheduled Case Management Conference. On  
2 January 5, 2012, Defendant again did not appear in court for a scheduled hearing. Plaintiffs  
3 represent that they have been unable to contact Defendant since August 18, 2011, when the  
4 parties participated in a telephonic settlement conference. Since that time, Defendant's phone  
5 number is no longer in service, mail sent to both of Defendant's mailing addresses, including  
6 the address he provided to the Court, is returned by the U.S. Post Office, and Defendant does  
7 not respond to email correspondence.

8 On January 6, 2012, the Court ordered Defendant to submit responsive materials to  
9 Plaintiffs' discovery requests by February 3, 2012, noting that Defendant would have "one  
10 final opportunity to supplement previously submitted discovery and provide pertinent and  
11 signed responses to all of Plaintiffs' discovery requests as required by the Federal Rules of  
12 Civil Procedure." (Dkt. No. 45.) Defendant was warned that if he failed to comply, his  
13 answer could be stricken, and he might be found in default. On January 23, 2012, service on  
14 Defendant was again returned as undeliverable. (Dkt. No. 46.) More than three months after  
15 the court-ordered discovery deadline, Defendant still has not complied.

16 In light of Defendant's failure to comply with a court order, protracted absence and  
17 unavailability, and apparent disinclination to defend this action, Plaintiffs' motion to strike  
18 Defendant's Answer to the Second Amended Complaint is GRANTED. The Court concludes  
19 that oral argument is unnecessary and vacates the hearing scheduled for May 31, 2012.

20 **IT IS SO ORDERED.**

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22 Dated: May 23, 2012

23   
24 JACQUELINE SCOTT CORLEY  
25 United States Magistrate Judge  
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