

1 Michele R. Stafford, Esq. (SBN 172509)
 Erica J. Russell, Esq. (SBN 274494)
 2 SALTZMAN & JOHNSON LAW CORPORATION
 44 Montgomery Street, Suite 2110
 3 San Francisco, CA 94104
 (415) 882-7900 – Telephone
 4 (415) 882-9287 – Facsimile
mstafford@sjlawcorp.com
 5 erussell@sjlawcorp.com

6 Attorneys for Plaintiffs, Bricklayers
 Local No. 3 Pension Trust, et al.
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8 UNITED STATES DISTRICT COURT
 9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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11 BRICKLAYERS LOCAL NO. 3 PENSION
 TRUST, et al.
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 Plaintiffs,
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 v.
 14 CAL-TEX MASONRY, INC., a California
 Corporation,
 15
 Defendant.
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Case No.: C14-3690 RS
 ORDER
**PLAINTIFFS’ RESPONSE TO STANDBY
 ORDER OF DISMISSAL (ORDER TO
 SHOW CAUSE)**
 Date: Thursday, May 5, 2016
 Time: 2:30 p.m.
 Ctrm: 3, 17th Floor
 450 Golden Gate Ave.
 San Francisco, CA
 Judge: The Honorable Richard Seeborg

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 19 Plaintiffs Bricklayers Local No. 3 Pension Trust, et al. (“Plaintiffs”) hereby respectfully
 20 submit their Response to Order to Show Cause (“Response”) pursuant to the Clerk’s April 6,
 21 2016, Notice regarding the Standby Order of Dismissal Hearing scheduled for May 5, 2016.

22 As set forth in Plaintiffs’ Notice of Settlement, filed on July 20, 2015, Plaintiffs and
 23 Defendant Cal-Tex Masonry, Inc. (“Defendant”) had reached a settlement in this matter, which
 24 was conditioned upon Defendant’s compliance with the terms of its collective bargaining
 25 agreement. Specifically, upon Defendant’s *timely* payment of contributions to Plaintiffs for a
 26 period of twelve (12) consecutive months, beginning with the month of June 2015, Plaintiffs
 27 agreed to waive the balance due by Defendant and to file a voluntary dismissal of this action.
 28 Defendant immediately defaulted and failed to timely pay its June through September 2015

1 contributions to Plaintiffs. Therefore, Defendant failed to meet the conditions necessary for
2 Plaintiffs to waive the balance owed by Defendant and dismiss this action.

3 In Plaintiffs' Response to the Court's Standby Order for Dismissal filed on January 4,
4 2016, Plaintiffs informed the Court that Defendant had failed to respond to several demands for
5 payment of the amounts owed to Plaintiffs. Plaintiffs had also offered Defendant a payment plan
6 if it could not pay the balance due in full. Plaintiffs advised the Court that if Defendant failed to
7 respond to their most recent demand by January 8, 2016, Plaintiffs would prepare and file a
8 Motion for Default Judgment against Defendant. On January 4, 2016, the Court's Clerk issued a
9 Notice Continuing the Standby Order of Dismissal Hearing scheduled for January 7, 2016 to
10 March 3, 2016, and ordered Plaintiffs to file a Show Cause Response by February 29, 2016.

11 After Plaintiffs filed their January 4, 2016, Show Cause Response, Defendant contacted
12 Plaintiffs regarding the amounts due and submitted a second request for a waiver of the liquidated
13 damages owed by it to Plaintiffs. Plaintiffs advised Defendant that interest and attorneys' fees
14 must be paid before its request for a waiver of liquidated damages will be considered by Plaintiffs.
15 Plaintiffs advised Defendant of the amount owed, less liquidated damages, and demanded
16 payment by March 4, 2016.

17 In Plaintiffs' Response to the Court's Standby Order for Dismissal filed on February 29,
18 2016, Plaintiffs informed the Court that upon receipt and bank clearance of Defendant's payment,
19 Plaintiffs would consider Defendant's request for a waiver of the liquidated damages. Plaintiffs
20 also advised Defendant that if its request for a waiver of liquidated damages was denied, and
21 Defendant could not pay the amount due in full, Defendant must enter into a payment plan.

22 Defendant submitted payment of the amounts owed, less liquidated damages, and
23 Defendant's request for a waiver of the liquidated damages was presented to Plaintiffs' Board of
24 Trustees. Plaintiffs' Board of Trustees denied the waiver of a portion of the liquidated damages
25 owed by Defendant, but granted a waiver of another portion of the liquidated damages,
26 conditioned upon receipt of payment for other amounts remaining due (including the above-
27 referenced liquidated damages which were not waived, additional interest and attorneys' fees
28 incurred, and Defendant's delinquent March 2016 contributions). The waiver is also conditioned

1 upon Defendant's *timely* payment of contributions to Plaintiffs for a period of twelve (12)
2 consecutive months, beginning with the month of April 2016.

3 Plaintiffs advised Defendant of the liquidated damages owed, as well as the conditions for
4 the waiver of the remaining liquidated damages held in abeyance, and demanded payment of
5 amounts owed by May 2, 2016. Plaintiffs also advised Defendant that if it could not pay the
6 amount due in full, Defendant could enter into a payment plan.

7 As Defendant owes amounts to Plaintiffs and has a conditional waiver of liquidated
8 damages pending, Plaintiffs are unable to file a Notice of Voluntary Dismissal of this action.
9 However, the parties are in communication regarding the amounts owed to Plaintiffs and hope to
10 reach an informal resolution of this matter. If an informal resolution cannot be reached, Plaintiffs
11 intend on filing a Motion for Default Judgment against Defendant. Therefore, Plaintiffs
12 respectfully request that the Court vacate, or alternatively continue, its Standby Order of Dismissal
13 (Order to Show Cause).

14 Respectfully submitted.

15 Dated: May 2, 2016

**SALTZMAN & JOHNSON
LAW CORPORATION**

17 By: _____ /S/
18 Michele R. Stafford
19 Attorneys for Plaintiffs, Bricklayers
Local No. 3 Pension Trust, et al.

20 **IT IS SO ORDERED.**

21 Based on the foregoing and GOOD CAUSE APPEARING, the Standby Order of
22 Dismissal is vacated, or continued to July 7 _____ 1:30 p.m.

23 Date: 5/2/16 _____


24 HONORABLE JUDGE RICHARD SEEBORG
25 UNITED STATES DISTRICT JUDGE

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