

1 BENJAMIN B. WAGNER
United States Attorney
2 ALYSON A. BERG
Assistant United States Attorney
3 2500 Tulare Street, Suite 4401
Fresno, California 93721
4 Telephone: (559) 497-4000
Facsimile: (559) 497-4099
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6 Attorneys for Defendant UNITED STATES OF AMERICA
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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**

10 LOUIS C. DOMINGO)
11 Plaintiff,) Case No. 1:15-cv-00284-AWI-JLT
12 v.)
13 MANAGEMENT & TRAINING) JOINT STIPULATION FOR
CORPORATION; and JOHN DOES 1-9,) DISMISSAL OF FIFTH CAUSE OF
14 Defendants.) ACTION AND STAY OF
15) REMAINING CLAIMS AGAINST
16) DEFENDANT UNITED STATES

17 IT IS HEREBY STIPULATED BY AND BETWEEN Plaintiff Luis Domingo, and Defendants
18 Management & Training Corporation and the United States, by and through their respective attorneys of
19 record, as follows:

20 This case involves a former Federal Bureau of Prisons (BOP) inmate suing the United States and
21 its contractor, Management & Training Corporation, for a miscellany of claims arising from the alleged
22 failure to prevent plaintiff from contracting Coccidioidomycosis (commonly referred to as Valley Fever
23 or Cocci) while incarcerated at Taft CI.

24 Plaintiff agrees to a dismissal of the fifth cause of action against the United States alleging a
25 claimed violation of the plaintiff's Eighth Amendment rights. As to the remaining claims against the
26 United States, the United States expressly reserves its right to assert any and all defenses to any
27 allegations made against it in this litigation, including, but not limited to, the timeliness of plaintiff's

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1 claims, the independent contractor exception to the Federal Tort Claims Act (FTCA), and the
2 discretionary function exception to the FTCA.

3 A dispositive issue in this case is whether plaintiff's remaining causes of action against the
4 United States are barred by the independent contractor exception to the FTCA because MTC controlled
5 the "day to day" operations at Taft CI. Plaintiff's claims are related to the claims in the matter of *Edison*
6 *v United States*, which action is currently on appeal as Ninth Circuit Case No. 14-15472, as well as the
7 claims in the matter of *Nuwintore v United States*, also on appeal as Ninth Circuit Case No. 14-17546.
8 As briefing in both cases is complete, and the parties are awaiting a date for oral argument in February
9 2016, a stay will not cause substantial delay in this action. *Leyva v. Certified Grocers of California,*
10 *Ltd.*, 593 F.2d 857, 863-64 (9th Cir.1979) ("[a] trial court may, with propriety, find it is efficient for its
11 own docket and the fairest course for the parties to enter a stay of an action before it, pending resolution
12 of independent proceedings which bear upon the case."). In this regard, the undersigned parties hereby
13 jointly request that the Court stay this action pending resolution of the appeals in *Edison v United States*,
14 Ninth Circuit Case No. 14-15472, and *Nuwintore v United States*, Ninth Circuit Case No. 14-17546, on
15 the basis of the good cause set forth above.

16 Accordingly, the undersigned parties respectfully request that the Court enter the [proposed]
17 order set forth below dismissing the fifth cause of action and stay this action pending resolution of the
18 *Edison* and *Nuwintore* appeals.

19 Respectfully submitted,

20 Dated: November 18, 2015

BENJAMIN B. WAGNER
UNITED STATES ATTORNEY

21 /s/Alyson A. Berg
22 ALYSON A. BERG
23 Assistant United States Attorney
Attorney for Defendant United States of America

24 Dated: November 17, 2015

Respectfully submitted,

25 FELDMAN & WALLACH

26 (As authorized 11/17/15)
27 /s/Ian Wallach
28 Ian Wallach
Attorneys for Plaintiff Luis C. Domingo

1 Dated: November 16, 2015

Respectfully submitted,
Burke, Williams & Sorensen, LLP

3 (As authorized 11/16/15)

4 /s/Susan Coleman

Susan Coleman

Attorney for Defendant Management &
Training Corporation

7 **ORDER**

8 Having reviewed the stipulation submitted by the parties, and for good cause, the court hereby
9 dismisses the fifth cause of action against the United States and stays the action until resolution of the
10 *Edison* and *Nuwintore* appeals.

11 IT IS SO ORDERED.

12 Dated: November 19, 2015


13 SENIOR DISTRICT JUDGE