

1 **Rivera&Associates**

2 2180 Harvard Street, Ste. 310
3 Sacramento, California 95815
4 Tel: 916-922-1200 Fax: 916 922-1303

5 Jesse M. Rivera, CSN 84259
6 Jonathan B. Paul, CSN 215884
7 Shanan L. Hewitt, CSN 200168
8 Kelly A. Yokley, CSN 192015

9 Attorneys for Plaintiff
10 TROY GABRIELSON

11 **IN THE UNITED STATES DISTRICT COURT**
12 **IN AND FOR THE EASTERN DISTRICT OF CALIFORNIA**

12	TROY GABRIELSON, et al.,)	CASE NO. 2:09-CV-00538-MCE-GGH
13	Plaintiffs,)	STIPULATION AND ORDER TO VACATE THE NOVEMBER 1, 2011 SETTLEMENT CONFERENCE BEFORE MAGISTRATE JUDGE KENDALL J. NEWMAN AS TO PLAINTIFF TROY GABRIELSON
14	vs.)	
15	UNITED STATES POSTAL SERVICE, et)	
16	al.,)	
17	Defendants.)	

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19 COMES NOW the plaintiff, TROY GABRIELSON, by and through his attorney
20 Jonathan B. Paul, of Rivera & Associates and defendant UNITED STATES POSTAL SERVICE
21 by and through its attorney Jason Ehrlinspiel, of the U.S. Attorney’s Office and subject to the
22 approval of this Court, hereby agree to and respectfully request the vacation of the November 1,
23 2011 settlement conference set before Magistrate Judge Kendall J. Newman. The undersigned
24 have agreed to purpose vacation of this conference and contend there is good cause for this
25 request for the following reasons:

- 26 1) At the invitation of and in response to a prior settlement offer by the United States,
27 Plaintiff Troy Gabrielson presented a settlement demand prior to the rescheduling of the
28 settlement conference in this matter to November 1, 2011. Plaintiff’s 1.5 million dollar

- 1 settlement offer is six times the sum certain listed in his FTCA administrative claim.
- 2 2) That Plaintiff Gabrielson's demand was rejected by the United States. The United States
3 asserts that plaintiff Gabrielson is administratively capped in his recovery pursuant to a
4 Government tort claim filed in this action. The United States also contests liability and
5 plaintiff Gabrielson's alleged damages.
- 6 3) The parties have had further discussions on the topic of presenting their respective
7 positions to the Magistrate Judge at the settlement conference. However, the parties
8 remain steadfast in their respective positions regarding liability, the administrative cap
9 and plaintiff Gabrielson's alleged damages; hence the parties are diametrically opposed
10 on the settlement value of this Mr. Gabrielson's case.
- 11 4) In light of the foregoing, the parties herein do not believe that continuing forward with
12 the settlement conference as to plaintiff, TROY GABRIELSON would be productive for
13 either the parties nor a sensible expenditure of judicial resources in this case.
- 14 5) Hence, the parties agree that this matter is no longer amenable to settlement conference
15 as to plaintiff, TROY GABRIELSON's claims.
- 16 6) The parties herein are in no way indicating that the November 1, 2011 settlement
17 conference should not continue as to Plaintiff, ALLAN BOWEN.

18 RIVERA & ASSOCIATES

19 DATED: October 27, 2011

/s/ Jonathan B. Paul
JONATHAN B. PAUL
Attorney for Plaintiff Troy Gabrielson

21 UNITED STATES ATTORNEY'S OFFICE

22 DATED: October 27, 2011

/s/ Jason Ehrlenspiel (auth'd on October 27, 2011)
Jason Ehrlenspiel, Assistant U.S. Attorney
Attorney for Defendant United States
Postal Service

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FOR GOOD CAUSE SHOWN as stated in the above set forth reasons,

IT IS SO ORDERED that the settlement conference scheduled for November 1, 2011 is vacated as to Plaintiff TROY GABRIELSON, only.

DATED: October 27, 2011


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE