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 9
 10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE EASTERN DISTRICT OF CALIFORNIA
 12

13 UNITED STATES OF AMERICA,
 14 Plaintiff,
 15 v.
 16 JOSEPH J. DeKELLIS,
 17 Defendant.

CASE NO.:2:09-CV-01852-JAM-GGH-PS

STIPULATION AND ORDER TO
 WITHDRAW MOTION TO DISMISS,
 EXTEND TIME FOR PLAINTIFF'S
 ANSWER OR MOTION, AND SCHEDULE
 BRIEFS AND HEARING

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 20 For the reasons set forth below, and subject to the Court's approval, the parties hereby stipulate
 21 as follows:

22 1. Defendant hereby withdraws the motion to dismiss filed on March 3, 2010, and currently set
 23 for hearing on May 20, 2010.

24 2. The United States consents to an extension of time to and including May 17, 2010, in which
 25 defendant may file his answer to the complaint or a new motion to dismiss asserting the same and/or
 26 additional defenses.

27 3. If defendant files a new motion to dismiss, he will set it for hearing at 10:00 a.m. on July 15,
 28 2010, and briefs will be filed on the following schedule: (a) the United States' memorandum in

1 opposition and cross-motion for summary judgment will be filed by June 16, 2010; (b) defendant's
2 reply memorandum and opposition to summary judgment will be filed by June 30, 2010; and (c) the
3 United States' reply memorandum will be filed by July 7, 2010.

4 The reasons for this stipulation are as follows:

5 1. Defendant has not filed an answer to the complaint, but instead filed a motion to dismiss.
6 Defendant wants to file a new motion to dismiss, asserting one or more additional defenses. It would
7 be inefficient for the Court and the parties to litigate both the current motion and a new one.

8 2. The United States plans to file a cross-motion for summary judgment for hearing at the same
9 time as defendant's motion to dismiss. However, the United States has been unable to file a response to
10 the current motion or a cross-motion for summary judgment because its counsel of record, Assistant
11 U.S. Attorney Ana Maria Martel, has been absent from work for medical reasons all or part of most
12 days since March 29, 2010, and she will be absent at least two (and perhaps four) weeks of May.

13 Respectfully submitted,

14 Dated: April 27, 2010

BENJAMIN B. WAGNER
United States Attorney

16 By: /s/ David T. Shelledy
17 DAVID T. SHELLIEDY
18 Chief, Civil Division
Assistant United States Attorney

19 Dated: April 27, 2010

/s/ Joseph J. DeKellis
20 JOSEPH J. DeKELLIS, Defendant
21 *In Pro Se*

22 ORDER

23 IT IS SO ORDERED.

24 Dated: May 5, 2010

/s/ Gregory G. Hollows

26 _____
27 U.S. Magistrate Judge

28 dekellis.with