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 and Scott Hundahl, M.D.  
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7  
 8 IN THE UNITED STATES DISTRICT COURT  
 9 EASTERN DISTRICT OF CALIFORNIA  
 10

11 MATTHEW BONZANI, M.D.,

12 Plaintiff,

13 v.

14 HONORABLE ERIC K. SHINSEKI,  
 Secretary of Veterans Affairs; and SCOTT  
 15 HUNDAHL, M.D.,

16 Defendants.  
 17

Case No. 2:11-cv-00007 EFB

**EX PARTE APPLICATION FOR ORDER  
 CONTINUING FINAL PRETRIAL  
 CONFERENCE; PROPOSED ORDER**

18 Defendants Eric K. Shinseki, Secretary of Veterans Affairs, and Scott Hundahl, M.D., by and  
 19 through their counsel, hereby move to continue the final pretrial conference and the deadline for the  
 20 parties' joint pretrial statement and, in support, represent as follows:

21 1. At the end of the day on September 30, 2013, the appropriations act that had been  
 22 funding the Department of Justice expired and appropriations to the Department lapsed. Absent an  
 23 appropriation, Department of Justice attorneys are prohibited from working, even on a voluntary basis,  
 24 except in very limited circumstances, including "emergencies involving the safety of human life or the  
 25 protection of property." 31 U.S.C. § 1342. That exception is not deemed to include most civil cases.

26 2. The undersigned Assistant U.S. Attorney, counsel for defendants in this action, was  
 27 subject to the furlough effective October 1, 2013. As of today, appropriations to the Justice Department  
 28 have been restored, and the undersigned Assistant U.S. Attorney has returned to work.

1 3. In addition to being unable to work on the joint pretrial statement in this matter since  
2 October 1, 2013, the undersigned U.S. Attorney is scheduled to travel and attend training out-of-state the  
3 entire week of October 21-25, 2013.

4 4. Under these circumstances, defendants believe that good cause exists for the Court  
5 continue to the final pretrial conference and the deadline for the parties' joint pretrial statement to allow  
6 the parties to work together on their joint pretrial statement, particularly in light of the Court's order  
7 denying summary judgment, which was entered on September 30, 2013, the same day that government  
8 funding lapsed. Defendants propose the following dates:

	<u>Old Date</u>	<u>New Date</u>
9 Joint Pretrial Statement Due	October 30, 2013	November 20, 2013
10 Final Pretrial Conference	November 13, 2013	December 4, 2013

11 5. Since defendants are not asking the Court to modify the trial date, modification of the  
12 scheduling order to continue the final pretrial conference and joint pretrial statement dates will not  
13 prejudice any party, and should not negatively impact the Court's schedule for this case, which would  
14 remain as follows:

15 Motions in Limine Due	January 13, 2014
16 Oppositions to Motions in Limine	January 20, 2014
Reply Briefs to Motions in Limine	January 27, 2014
17 Trial Briefs Due	January 28, 2014
Trial Begins	February 11, 2014

18 6. Defendants' counsel notified plaintiff's counsel by email message this morning that  
19 defendants would be filing this continuance request.

20 Respectfully submitted,

21 DATED: October 17, 2013

BENJAMIN B. WAGNER  
United States Attorney

22  
23 By: /s/ Lynn Trinka Ernce  
LYNN TRINKA ERNCE  
Assistant United States Attorney

24  
25 **ORDER**

26 IT IS SO ORDERED.

27 Date: October 22 2013

  
EDMUND F. BRENNAN  
United States Magistrate Judge