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UNITED STATES DISTRICT COURT

#### NORTHERN DISTRICT OF CALIFORNIA

#### SAN FRANCISCO DIVISION

VICTOR WILSON, No. 09-3135 JSW Plaintiff, APPLICATION UNDER CIVIL LOCAL **RULE 7-11 FOR MISCELLANEOUS** RELIEF; DECLARATION OF v. JONATHAN U. LEE; PROPOSED SHAUN DONOVAN, SECRETARY OF **ORDER** THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, Date: December 18, 2009 1:30 p.m. Time: 11, 19<sup>th</sup> Floor Defendant. Ctrm:

#### NOTICE AND RELIEF REQUESTED

PLEASE TAKE NOTICE that under Civil Local Rule 7-11, Counsel for Defendant Donovan hereby moves the Court for an order accommodating Assistant U.S. Attorney Lee's potential conflict for tomorrow's Case Management Conference as explained below. This motion seeks permission to have tomorrow's Case Management Conference called first on the Court's calendar, to allow AUSA Lee to attend a further Settlement Conference before Magistrate Laporte set to begin at 2:00 p.m. tomorrow in Courtroom E.

In the alternative, in light of the Court's possible need to call other matters before *Wilson v. Donovan*, this motion seeks permission for AUSA Lee to attend the settlement conference, beginning at 2:00 p.m., until the Case Management Conference is called on this Court's calendar, at which time AUSA Lee can be notified by telephone and return from Courtroom E immediately.

#### FACTUAL BACKGROUND

This matter was filed on July 10, 2009. Docket #1. The Court's initial scheduling order set the Case Management Conference for October 23, 2009. Dkt. #4. By clerk's notice filed October 19, 2009, the Court continued the Case Management Conference until December 18, 2009. Dkt. #6. The Federal Defendant filed its Answer on December 3, 2009. Dkt. #7. The parties filed separate CMC statements on December 11, 2009. Dkt. #8 9, 12.

Hernandez v. USA is a medical malpractice case that went to trial in May and June 2009. Action 06-3350 SBA Docket #s 232-234, 240. The trial resulted in a judgment for plaintiff. Dkt. #256. The Court set a Settlement Conference with Magistrate Laporte for November 13, 2009. Dkt. #s269-270. Due to Magistrate Laporte's schedule, at the time, November 13, 2009 was the only available date for the remainder of 2009. Lee Declaration, ¶3. The matter did not settle, but there was progress in subsequent communications between counsel, which resulted in a further settlement conference being scheduled with Magistrate Laporte. Id. The only available slot for this conference, due to Magistrate Laporte's schedule, was December 18, 2009. Id. The parties confirmed this date with Magistrate Laporte on December 11, 2009. Id.

### **ARGUMENT**

This motion seeks permission for AUSA Lee to attend the Case Management Conference and the further Settlement Conference, both scheduled for tomorrow. If this Court calls the Case Management Conference in this case first on its calendar, the matter would most likely be concluded before 2:00 p.m. Given the Court's calendar needs, this may not be preferable for the Court. In that event, AUSA Lee seeks permission to leave for the further Settlement Conference shortly before 2:00 p.m., to be notified by telephone when this matter is called.

#### **CONCLUSION**

Defendant respectfully requests that its request be granted.

Respectfully submitted, JOSEPH P. RUSSONIELLO United States Attorney

Dated: December 17, 2009

JONATHAN U. LEE
Assistant United States Attorney
Attorney for Federal Defendant
HUD Secretary Donovan

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3.

#### **DECLARATION OF JONATHAN U. LEE**

I, Jonathan U. Lee, declare:

- I am an Assistant United States Attorney in the United States Attorney's Office for the Northern District of California. I am licensed to practice law in California and to appear before this Court.
- 2. I make this declaration from my own personal knowledge. If called as a witness, I could and would competently testify to the contents of this declaration.
  - In the *Hernandez v. USA* matter, I attended the settlement conference before Magistrate Laporte on November 13, 2009. At the time of scheduling that conference, which was on or about November 3-4, 2009, the date of November 13, 2009 was the only open date on Magistrate Laporte's calendar for the remainder of 2009. After the November 13, 2009 conference, plaintiff's counsel and I have been engaged in extensive negotiations and we both agreed a further conference with Magistrate Laporte would be beneficial to the settlement negotiations. We contacted Magistrate Laporte's chambers during the week of December 7-11, 2009. We learned that a 1-2 hour time slot had become available on December 18, 2009, starting at 2:00 p.m. This was confirmed for me on December 11, 2009. On December 15, 2009, plaintiff's counsel confirmed to me that he would be attending the conference, after clearing his schedule and purchasing airplane tickets (his office is in Southern California).

I declare under penalty of perjury that the foregoing is true and accurate and that I have executed this declaration on December 17, 2009 in San Francisco, California.

/s/
JONATHAN U. LEE
Assistant United States Attorney

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# PROPOSED ORDER

United States District

The motion is granted. The case management conference shall be called first on the calendar. 

DATED: December 17, 2009

MOTION FOR MISCELLANEOUS SCHEDULING RELIEF C09-3135 JSW