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14 AND ANTHONY J. LOVERDE

15 UNITED STATES DISTRICT COURT

16 NORTHERN DISTRICT OF CALIFORNIA

17 MICHAEL ALMY, JASON KNIGHT, and
18 ANTHONY LOVERDE,

19 Plaintiffs,

20 v.

21 UNITED STATES DEPARTMENT OF
DEFENSE; ROBERT M. GATES, Secretary
22 of Defense; DEPARTMENT OF THE AIR
FORCE; MICHAEL B. DONLEY, Secretary,
23 Department of the Air Force; DEPARTMENT
OF THE NAVY; and RAY MABUS,
24 Secretary, Department of the Navy,

25 Defendants.

Case No. cv 10-5627 (RS)

**PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION
REQUESTING A CONTINUANCE OF
THE INITIAL CASE MANAGEMENT
CONFERENCE**

Courtroom 3 - 17th Floor
Judge: Hon. Richard Seeborg

1 Plaintiffs Michael D. Almy, Anthony J. Loverde, and Jason D. Knight (collectively,
2 “Plaintiffs”) respectfully oppose Defendants’ Administrative Motion Requesting a Continuance
3 of the Initial Case Management Conference.

4 The sole basis for Defendants’ request is 28 U.S.C. § 1292(d)(4)(B), which stays further
5 proceedings “[w]hen a motion to transfer an action to the...Court of Federal Claims is filed in
6 [the] district court[.]” 28 U.S.C. § 1292(d)(4)(B). Plaintiffs do not dispute that 28 U.S.C. §
7 1292(d)(4)(B) currently applies to this case, as Defendants have filed a motion to transfer this
8 action to the Court of Federal Claims. (*See* ECF No. 19.) However, Plaintiffs intend to seek
9 leave of Court to file a First Amended Complaint which will explicitly limit the requested relief
10 to reinstatement on active duty service in the military. *See Consol. Edison Co. of New York v.*
11 *United States*, No. 98 Civ. 4155 (WK), 1999 U.S. Dist. LEXIS 18561, at *3 (S.D.N.Y. Nov. 29,
12 1999) (granting motion for leave to amend complaint where statutory stay was in place under 12
13 U.S.C. § 1292(d)(4)(B)). Plaintiffs intend to file their motion on March 16, 2011. The motion
14 will be heard on the same day (May 5, 2011) as Defendants’ motion to transfer.

15 The contemplated amendments would remove entirely the basis for Defendants’ motion to
16 transfer, thus rendering the motion moot and terminating the statutory stay. This case then would
17 be free to proceed. In light of the contemplated amended pleading and related case management
18 issues, the March 24, 2011 case management conference still serves an important purpose.
19 Plaintiffs therefore oppose any continuance of the case management conference.

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21 Dated: March 15, 2011

MORRISON & FOERSTER LLP

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23 By: /s/ M. Andrew Woodmansee
M. ANDREW WOODMANSEE
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25 Attorneys for Plaintiffs
MICHAEL ALMY, JASON KNIGHT,
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CERTIFICATE OF SERVICE

I hereby certify that all counsel of record, who are deemed to have consented to electronic service, are being served this 15th day of March, 2011, with a copy of this document via the Court's CM/ECF system.

/s/ M. Andrew Woodmansee
M. Andrew Woodmansee