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16 Of Counsel for Defendant
 UNITED STATES OF AMERICA
 17

18 UNITED STATES DISTRICT COURT
 19 NORTHERN DISTRICT OF CALIFORNIA
 20 SAN FRANCISCO
 21

22 TERRY MENDOZA,)
)
 23 Plaintiff,)
)
 24 v.)
)
 25 UNITED STATES OF AMERICA; and)
 THE REGENTS OF THE)
 26 UNIVERSITY OF CALIFORNIA,)
)
 27 Defendants.)
)
 28)

Case No. CV-11-02158 EMC
JOINT CASE MANAGEMENT STATEMENT

Date: January 14, 2016
Time: 10:30 a.m.
Place: Courtroom 5, 17th Floor
Judge: Edward M. Chen

Complaint Filed: May 2, 2011
Trial Date: None

1 Counsel for Plaintiff:

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12 **1. JURISDICTION AND SERVICE:**

13 This action is being prosecuted by Plaintiff pursuant to the Jones Act, 46 USC § 30104, *et*
14 *seq.*, the Suits in Admiralty Act, 46 USC § 30903, the Public Vessels Act, 46 USC § 31102, and
15 the General Admiralty Law of the United States. This Court obtains original jurisdiction over the
16 subject matter and parties to the suit pursuant to 28 USC § 1333(a) in addition to the above-
17 statutory provisions. The parties do not contest the jurisdiction of this Court over the subject
18 matter and parties to this action or venue.

19 **2. FACTS:**

20 This action is maritime personal injury in nature and arises from an incident of injury
21 suffered by Terry Mendoza on June 4, 2010, while he was acting within the scope and course of
22 his employment for the University of California aboard the R/P FLIP.

23 It is Plaintiff's claim that while the R/P FLIP was being moored with the assistance of the
24 USNS SIOUX, he sustained injury as a result of the negligence of the officers and crewmembers
25 of both vessels, the unseaworthiness of both vessels, and failure of Defendant to provide him
26 with a safe place to work.

27 Defendant denies each of Plaintiff's allegations in that regard.

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1 **2A. Factual Issues:**

2 The manner in which the subject accident occurred and causal connection of the accident
3 to Plaintiff's claimed injuries.

4 Whether Plaintiff's claimed injuries, if any, were caused or contributed to by the
5 negligence attributable to Defendant and/or the unseaworthiness of the vessel.

6 Plaintiff's comparative fault, if any.

7 Recoverable damages.

8 **3. LEGAL ISSUES:**

- 9 • Negligence of Defendant including, but not limited to, the failure to provide a safe
10 place to work.
- 11 • Negligence under the General Admiralty and Maritime Laws of the United States
12 including failure to use reasonable care under the circumstances including failure
13 to provide adequate, competent and sufficient manpower, equipment, and work
14 and safety procedures under the prevailing circumstances then and there present.
- 15 • The seaworthiness of the R/P FLIP.
- 16 • The nature and extent of damages to which Mr. Terry Mendoza is entitled under
17 the applicable law.
- 18 • Plaintiff's entitlement to pre-judgment interest.
- 19 • Plaintiff's entitlement to attorney fees.
- 20 • Defendant's entitlement to exoneration and/or limitation of liability.
- 21 • Whether Plaintiff has mitigated his damages.
- 22 • Plaintiff's comparative fault, if any.
- 23 • Whether Plaintiff's claims are barred by the doctrine of laches, waiver and
24 estoppel.
- 25 • Whether Defendant's actions as alleged in Plaintiff's Complaint constitute
26 exercise of discretion.

27 **4. MOTIONS:**

28 The parties do not currently anticipate any substantive motions at this time but reserve the
right to file any necessary motions.

5. AMENDMENT OF PLEADINGS:

The parties reserve the right to amend pleadings as may be necessary.

1 **6. DISCLOSURES:**

2 The parties have completed Rule 26 initial disclosures.

3 **7. DISCOVERY:**

4 Plaintiff's deposition is partially complete and he has still not yet reached maximum
5 medical improvement. He has been treating for neck and shoulder problems, including dystonia,
6 that he alleges are related to the incident. Given the ongoing treatment for orthopaedic injuries,
7 Plaintiff had an orthopaedic IME with Dr. Richard Greenfield in September 2014, and his report
8 was completed on November 2, 2014. Plaintiff desires to depose a Person Most Knowledgeable
9 from the University of California regarding benefits paid to Mr. Mendoza which is being
10 scheduled in the next few weeks; the Person Most Knowledgeable from the Military SeaLift
11 Command regarding application and operation of ISM to the USNS SIOUX; and the USNS
12 SIOUX helmsman. Plaintiff has deposed six people employed by the University of California as
13 well as the master of the USNS SIOUX, Captain Brad Smith. Plaintiff has also has expressed an
14 interest in deposing the defense neurologist Dr. Michael Lobatz. Plaintiff has deposed seven of
15 Plaintiff's evaluating and treating medical providers including: Alicjia Steiner, M.D.; Robert
16 Warren, M.D.; Ian Purcell, M.D.; Philip Azer, M.D.; Sarah Ray, Psy. D.; Edward Brantz, M.D.;
17 and William Tontz, Jr., M.D. Plaintiff also recently deposed Dr. Louis Fontana, Dr. Shams
18 Sheikh, Dr. Manuel Tobias, and Captain Chris Troupe. Defendant scheduled the deposition of
19 Dr. Barbara Schrock in July 2015, but due to unforeseen reasons the deposition was cancelled.
20 Psychological IME testing of Plaintiff is scheduled for October 5, 2015, with Dr. Dean Delis. An
21 earlier appointment was cancelled because Plaintiff's significant other had an unforeseen medical
22 emergency. Defendant also wishes to schedule a neuropsychiatric IME of Plaintiff. The parties
23 do not propose any limitations or modifications of the discovery rules. Further discovery is
24 needed regarding Plaintiff's allegations of negligence on the part of Defendant, and General
25 Maritime Law of the United States; the unseaworthiness of the R/P FLIP and/or USNS SIOUX;
26 the nature and extent of Terry Mendoza's injuries, disability, and damages; and Defendant's
27 claims of comparative negligence on the part of Mr. Mendoza.

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1 Defendant does not wish to complete Plaintiff's deposition until he has reached
2 maximum medical improvement status. Defendant also anticipates deposing several former
3 employers and associates of plaintiff who are located in Washington and Alaska.

4 **8. RELIEF:**

5 Plaintiff seeks monetary damages as follows:

6 Pecuniary damages: Plaintiff would seek loss of wages and destruction or diminishment
7 of wage earning capacity should be calculated considering the wages paid by University of
8 California, San Diego, to crew members of vessels which it operated at the time of the subject
9 incident June 4, 2010, with adjustments for pay increases and promotions.

10 Medical expenses: The costs of ongoing medical evaluation, treatment and maintenance
11 pursuant to recommendations of Mr. Mendoza's treating and evaluating medical providers and a
12 life care plan.

13 Non-pecuniary damages in the nature of loss of social pleasures, fright and shock, and
14 pain and suffering past, present and future.

15 Pre-judgment interest.

16 **9. SETTLEMENT AND ADR:**

17 The parties reached a conditional settlement at mediation on December 17, 2015. The
18 parties will finalize the settlement and file a dismissal. The parties request that the Case
19 Management Conference set for January 14, 2016, be taken off calendar.

20 **10. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES:**

21 At this time the parties do not consent to a Magistrate Judge.

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1 Undersigned counsel for Defendant UNITED STATES OF AMERICA, Marker E.
2 Lovell, Jr., certifies that all electronic signatures below have been duly authorized by signatory
3 counsel per Civil Local Rule 5.1. Marker E. Lovell, Jr., attests to have on file all holographic
4 signatures corresponding to any signatures indicated by a conformed signature (/S/) within this e-
5 filed document.

6
7 Dated: January 7, 2016

Dated: January 7, 2016

8
9 OBRYAN BAUN KARAMANIAN

GIBSON ROBB & LINDH LLP

10
11 By: /S/ GARY WM. BAUN

Gary Wm. Baun
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Attorney for Plaintiff
TERRY MENDOZA

By: /S/ MARKER E. LOVELL, JR.

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Attorney for Defendant
UNITED STATES OF AMERICA

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15 IT IS SO ORDERED that the Further CMC
16 is reset from 1/14/16 to 2/11/16 at
17 10:30 a.m. An updated joint CMC statement
18 shall be filed by 2/4/16. The 2/11/16
19 CMC will be vacated once a stipulation for
20 dismissal is filed.

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Edward M. Chen
U. S. District Judge

