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2 UNITED STATES DISTRICT COURT
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA
4 OAKLAND DIVISION

5 ROMEO R. DE FERNANDEZ,
6 CIRIACO C. DELA CRUZ,
7 VALERIANO V. MARCELINO,
8 VETERANS EQUITY CENTER, a non-profit
organization on behalf of themselves and
others similarly situated,

9 Plaintiff,

10 vs.

11 UNITED STATES DEPARTMENT OF
12 VETERANS AFFAIRS;

13 ERIK K. SHINESKI, Secretary of Department
of Veterans Affairs;

14 MICHAEL WALCOFF, Acting Under
15 Secretary, Veterans Benefits Administration,

16 DAVID WEST, Veterans Service Center
17 Manager, Oakland Regional Office of
Veterans Benefits Administration;

18 Defendants.

Case No: C 10-2468 SBA

**ORDER SETTING REVISED
BRIEFING SCHEDULE ON
MOTION TO DISMISS**

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20 At the direction of the Court, Defendants filed a revised motion to dismiss in light of
21 the Ninth Circuit's then controlling decision in Veterans for Common Sense v. Shineki, 644
22 F.3d 845 (9th Cir. 2011) ("VCS I"). See Dkt. 35. Since the briefing on the motion closed,
23 however, the Ninth Circuit issued an en banc decision vacating VCS I. Veterans for
24 Common Sense v. Shinseki, -- F.3d --, 2012 WL 1574288 (9th Cir., May 7, 2012) ("VCS
25 II") (en banc). As a result, Plaintiffs propose that the Court permit the parties to submit
26 revised opposition and reply briefs to incorporate the Ninth Circuit's recent en banc
27 decision. However, since Defendants' motion is predicated VCS I, which has since been
28

1 vacated, the Court concludes that the better course of action is for Defendants to resubmit
2 its motion in light of VCS II. Accordingly,

3 IT IS HEREBY ORDERED THAT:


4 1. Within two weeks of the date this Order is filed, Defendants shall file a
5 revised motion to dismiss as set forth above. Plaintiffs' opposition shall be filed two weeks
6 thereafter, and Defendants' reply shall be filed one week after Plaintiffs' file their
7 opposition. The moving and opposition briefs shall be limited to seventeen (17) pages, and
8 the reply shall be limited to ten (10) pages.

9 2. Defendants' motion to dismiss is set for hearing on **September 18, 2012 at**
10 **1:00 p.m.** Pursuant to Federal Rule of Civil Procedure 78(b) and Civil Local Rule 7-1(b),
11 the Court, in its discretion, may resolve the motion without oral argument. The parties are
12 advised to check the Court's website to determine whether a court appearance is required.

13 3. In view of this Order, Defendants' pending motion to dismiss (Dkt. 35) shall
14 be terminated.

15 IT IS SO ORDERED.

16 Dated: June 20, 2012


SAUNDRA BROWN ARMSTRONG
United States District Judge

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