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11 Attorneys for Defendant Central Valley Construction

12 UNITED STATES DISTRICT COURT
 13 NORTHERN DISTRICT OF CALIFORNIA
 14

15 OPERATING ENGINEERS' HEALTH AND
 WELFARE TRUST FUND FOR NORTHERN
 16 CALIFORNIA, et al.,

17 Plaintiffs,

18 v.

19 CENTRAL VALLEY CONSTRUCTION, INC., a
 California corporation;

20 Defendant.
 21

Case No.: 17-cv-02365-KAW

**JOINT REQUEST TO CONTINUE CASE
 MANAGEMENT; [PROPOSED] ORDER
 THEREON**

Date: Tuesday, October 16, 2018

Time: 1:30 p.m.

Ctrm: 4, Third Floor

1301 Clay Street

Oakland, California

Judge: Hon. Magistrate Judge

Kandis A. Westmore

22 Plaintiffs Operating Engineers' Health and Wealth Trust Fund, et al. and Defendant Central
 23 Valley Construction, Inc. (collectively, "the Parties") respectfully request that the Case Management
 24 Conference, currently on calendar for March 6, 2018, be continued for approximately sixty to ninety
 25 (60-90) days. Good cause exists for the granting of the continuance, as follows:

- 26 1. As the Court's records will reflect, this action was filed on April 26, 2017 (Dkt. #1).
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1 Defendant was personally served on May 4, 2017, and a Proof of Service of Summons was filed with the
2 Court on May 25, 2017 [Dkt. #9.] Defendant retained counsel and counsel for Defendant filed an
3 Answer to Complaint [Dkt. #8.]

4 2. On July 17, 2017, the Court issued an Order (“Order”) referring this matter to mediation
5 [Dkt. #14.]

6 3. On August 15, 2017, the Court issued a Notice appointing Geoffrey White as mediator
7 [Dkt. #17.]

8 4. On August 28, 2017, the parties participated in a pre-mediation conference call with Mr.
9 White whereby the participants concluded that a mediation date would be set after the parties had a
10 further opportunity to meet and confer.

11 5. Thereafter, the Defendant contacted Plaintiffs’ Auditor and scheduled an audit
12 appointment for October 26, 2017. The Defendant provided Plaintiffs’ Auditor with some
13 documentation necessary to conduct the audit.

14 6. Plaintiffs requested additional documentation that they allege is necessary to complete
15 the audit. Specifically, Plaintiffs allege that the Defendant has failed to provide its cash disbursements
16 journal (or equivalent records) to Plaintiffs’ Auditor. This is standard documentation required for
17 compliance with payroll audits for ERISA Trust Funds. Plaintiffs’ Counsel has detailed to Defendant’s
18 Counsel what equivalent alternative documents can be provided. Nevertheless, the requested records still
19 remain outstanding.

20 7. Plaintiffs issued discovery to Defendant’s Counsel on or about May 22, 2018. The
21 discovery requested information that would ordinarily be disclosed by an employer’s cash disbursements
22 journal. No response to the discovery was received.

23 8. Plaintiffs thereafter issued a detailed Meet and Confer letter to Defendant’s Counsel on or
24 about August 2, 2018. The discovery responses remain outstanding and no additional information has
25 been produced by Defendant. In response to the Meet and Confer letter, Defendant’s Counsel only
26 responded that he would forward the letter to his client. Plaintiffs also demanded that Defendant’s
27 Counsel provide his availability for a Meet and Confer telephone conference pursuant to Judge
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1 Westmore's Standing Order. No availability was provided.

2 9. Plaintiffs demanded that a Meet and Confer pursuant to Judge Westmore's Standing
3 Order take place telephonically on October 10, 2018 at 10:00 a.m. If the Meet and Confer is not
4 successful, Plaintiffs' Counsel will demand Defendant's Counsel's participation in the filing of a Joint
5 Discovery Letter Brief to occur within 14 days after the Meet and Confer call.

6 10. Defendant's counsel alleges that Defendant provided hundreds of pages of bank
7 statements and paid checks to Plaintiffs' counsel to be delivered to the auditor and Defendant is
8 gathering additional documents requested by the audit, none of which involve the three employees
9 utilized on the particular job in issue. Defendant's counsel has been out of his office due to the serious
10 medical condition of his wife and assisting his brother in a regimen of chemotherapy and radiation for
11 Stage 4 esophageal cancer.

12 11. Plaintiffs contend that the discovery dispute must be resolved before the matter can move
13 forward. The timeline relative to the discovery dispute has been set forth above. Once the discovery
14 dispute has been resolved, and Plaintiffs' Auditor confirms that the documents needed to complete the
15 audit have been provided, the Parties intend to go to mediation regarding any dispute of the audit report
16 itself and the amounts owed to the Plaintiffs.

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1 12. Therefore, there are no issues that need to be addressed by the parties at the currently
2 scheduled Case Management Conference. In the interest of conserving costs, as well as the Court's time
3 and resources, the Parties respectfully request that the upcoming Case Management Conference be
4 continued for approximately sixty to ninety (60-90) days, or until after the mediation has taken place, to
5 allow sufficient time to attempt to resolve the matter.

6 Executed this 9th day of October 2018 at San Francisco, California.

7
8 SALTZMAN & JOHNSON LAW CORPORATION

9 By:

10 _____ /S/

11 Matthew P. Minser
12 Attorneys for Plaintiffs, Operating Engineers' Health
13 and Welfare Trust Fund For Northern California, et
14 al.

15 DAVID C. JOHNSTON, ATTORNEY AT LAW

16 _____ /S/

17 David C. Johnston
18 Attorney for Defendant, Central Valley Construction

19 IT IS SO ORDERED.

20 The currently set Case Management Conference is hereby continued to
21 _____ December 18, 2018 _____ at _____ 1:30 p.m. _____, and all previously set deadlines and dates
22 related to this case are continued accordingly, or, alternatively, Plaintiffs may appear at the Case
23 Management Conference by telephone.

24 DATED: 10/10, 2018

25 
26 _____
27 UNITED STATES MAGISTRATE JUDGE
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1 **ATTESTATION CERTIFICATE**

2 In accord with the Northern District of California’s Civil Local Rule 5-1, I attest that
3 concurrence in the filing of this document has been obtained from each of the other signatories who are
4 listed on the signature page.

5 Dated: October 9, 2018

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7 By: _____ /S/
8 Matthew P. Minser
9 Attorneys for Plaintiffs
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