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11 Attorneys for Defendant Central Valley Construction

12 UNITED STATES DISTRICT COURT  
 13 NORTHERN DISTRICT OF CALIFORNIA

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 AS MODIFIED**

Date: Tuesday, March 19, 2019  
 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 19, 2019, 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  
28

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 in October 2018. The Meet and Confer call did then take place. During  
4 the call, Defendant's Counsel stated that he would work with his client to attempt to provide responses  
5 to the outstanding discovery. Plaintiffs' Counsel agreed to give Defendant's Counsel some time, but  
6 stated that a Letter Brief would ultimately need to be filed if Defendant continued to not comply with the  
7 propounded discovery.

8 10. A Joint Discovery Letter Brief was filed on December 11, 2018 (Dkt. # 33). The Court  
9 issued an Order on the Joint Discovery Letter Brief on December 20, 2018 (Dkt. #35). The Court's  
10 Order required that Defendant produce responses to Plaintiffs' discovery by January 10, 2019 (the Order  
11 states 2018 rather than 2019).

12 11. To date, no discovery responses have been received by Plaintiffs' Counsel. Plaintiffs are  
13 in the process of preparing a Motion to Compel. Plaintiffs anticipate their Motion to Compel will be on  
14 file with the Court by April 1, 2019.

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

21 13. Defendant's attorney reports that his wife has been in the hospital and nursing home since  
22 January 7, 2019 and had been in and out of the hospital for several months before this continuous  
23 hospitalization. He further reports that his 97 year old father was hit by a car in late October and has  
24 been on hospitals and a rehabilitation facility since then. He has been in the critical care unit in the  
25 hospital on Stockton with pneumonia and sepsis since March 3, 2019

26 14. Plaintiffs contend that the discovery dispute must be resolved before the matter can move  
27 forward. Once the discovery dispute has been resolved, and Plaintiffs' Auditor confirms that the  
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1 documents needed to complete the audit have been provided, the Parties intend to go to mediation  
2 regarding any dispute of the audit report itself and the amounts owed to the Plaintiffs. Therefore, the  
3 Parties request that the deadline to complete mediation be continued to June 15, 2019.

4 15. As Plaintiffs intend to file their Motion to Compel by April 1, 2019, there are no issues  
5 that need to be addressed by the parties at the currently scheduled Case Management Conference. In the  
6 interest of conserving costs, as well as the Court's time and resources, the Parties respectfully request  
7 that the upcoming Case Management Conference be continued for approximately sixty to ninety (60-90)  
8 days, or until after the mediation has taken place, to allow sufficient time to attempt to resolve the  
9 matter.

10 Executed this 12th day of March 2019

11 SALTZMAN & JOHNSON LAW CORPORATION

12 By: \_\_\_\_\_ /S/

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

17 DAVID C. JOHNSTON, ATTORNEY AT LAW

18 \_\_\_\_\_ /S/

19 David C. Johnston  
20 Attorney for Defendant, Central Valley Construction

21 **ORDER AS MODIFIED**

22 The currently set Case Management Conference is hereby continued to July 9, 2019 at 1:30 p.m.,  
23 with the joint case management statement due by July 2, 2019, and all previously set deadlines and dates  
24 related to this case are continued accordingly. The deadline for the Parties to complete mediation is  
25 hereby continued to June 17, 2019. **Defendant is ordered to supplement its discovery responses and  
26 produce all responsive documents within 21 days of this order. The parties are reminded that the  
27 undersigned does not entertain motions to compel.**

28 IT IS SO ORDERED.

DATED: March 13, 2019



UNITED STATES MAGISTRATE JUDGE

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: March 12, 2019

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