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4	·
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8	United States Postmaster General Patrick R. Donahoe
9	UNITED STATES DISTRICT COURT
10	NORTHERN DISTRICT OF CALIFORNIA
11	SAN JOSE DIVISION
12	KUANG-BAO P. OU-YOUNG.) No. CV 12-02789 LHK
13)
14	Plaintiff,) ADMINISTRATIVE MOTION TO
15	v.) CONTINUE CASE MANAGEMENT) CONFERENCE FROM OCTOBER 17,
16	ALEJANDRO B. VASQUEZ, in his official) 2012, TO NOVEMBER 15, 2012 capacity; et al.
17	Defendants.
18	
19	PLEASE TAKE NOTICE that, pursuant to Civil L. R. 7-11, the United States of America
20	and United States Postmaster General Patrick R. Donahoe ¹ hereby move the Court for an order
21	continuing the October 17, 2012 Case Management Conference to November 15, 2012, or any
22	date thereafter, to be held, if necessary, following the hearing on the pending motion to dismiss
23	
24	¹ Plaintiff has not yet properly served the individual defendants named in Case No. C 12-
25	02789 in accordance with Federal Rules of Civil Procedure 4(c)(2) and 4(i)(3), which require personal service by an adult who is not a party. To the extent plaintiff is pursuing tort claims
26	against federal employees acting in their official capacities, the United States of America is the
27	only proper defendant. 28 U.S.C. § 2679(b)(1). To the extent plaintiff is pursuing employment discrimination claims, United States Postmaster General Patrick R. Donahoe, as head of the
28	agency which employed plaintiff, is the only proper defendant. 42 U.S.C.A. § 2000e-16.
20	

Administrative Motion to Continue CMC CV 12-02789 LHK

filed August 9, 2012, Document 20, which is set for hearing on November 15, 2012.

By way of background, plaintiff filed this action on May 31, 2012. Plaintiff declined to proceed before a Magistrate Judge and this case was re-assigned to Your Honor. On July 17, 2012, in response to plaintiff's administrative motion, moving parties advised the Court that they intended to file a motion to dismiss on August 10, 2012 and requested the Court to schedule a Case Management Conference for October 3, 2012, or any date thereafter, so that the Case Management Conference occurred after the hearing on the motion to dismiss. On August 9, 2012, the moving parties filed their motion to dismiss (Document 20). As per Your Honor's Courtroom Deputy, the first available hearing date was November 15, 2012, and the moving parties noticed the hearing on the motion to dismiss for that date. Also on August 9, 2012, after filing the motion to dismiss, counsel for the moving parties called plaintiff on the telephone and left a voice-mail message for plaintiff requesting plaintiff to stipulate to the administrative relief requested herein. As of this filing, plaintiff has not responded to that request.²

As defendant's pending motion to dismiss should be dispositive, the moving parties request that the Case Management Conference be continued until November 15, 2012, or any date thereafter, in order to conserve time and resources.

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Respectfully submitted,

MELINDA HAAG United States Attorney

James A. Scharf Assistant United States Attorney

Dated: August 10, 2012

²I declare under penalty of perjury that the background facts stated in this administrative motion are true and correct.

[PROPOSED] ORDER

Good cause appearing, the October 17, 2012, Case Management Conference is continued to November 15, 2012, to be held, if necessary, immediately following the hearing on the pending motion to dismiss. The parties shall file their Case Management Conference

Statement(s) on or before November 8, 2012.

Plaintiff's motion to change time is DENIED as moot. See ECF No. 17.

DATED: _____, 2012

Hon, Lucy H. Koh

United States District Court Judge