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12 **UNITED STATES DISTRICT COURT**

13 **DISTRICT OF NEVADA**

14 JOSEPH G. O'BRIEN,)
15)
16 Plaintiff,)

17 vs.)

18 UNITED STATES OF AMERICA,)
19)
20 Defendant.)

21 UNITED STATES OF AMERICA,)
22)
23 Counterclaim Plaintiff,)

24 vs.)

25 JOSEPH G. O'BRIEN, MICHAEL V.)
26 VILLAMOR, DAN K. SHAW, and JAMES)
27 R. VAN WOERKOM,)
28 Counterclaim Defendants.)

29 DAN K. SHAW,)
30)
31 Counterclaim Plaintiff,)

32 vs.)

33 UNITED STATES OF AMERICA,)
34)
35 Counterclaim Defendant.)

CASE NO. 2:07-cv-00986-GMN-GWF

JOINT MOTION, STIPULATION, AND
PROPOSED ORDER TO SUSPEND
JOINT PRETRIAL ORDER DEADLINE,
VACATE STATUS CONFERENCE
SETTING, AND DIRECT PARTIES TO
SUBMIT PROPOSED SCHEDULING
ORDER

1 For the reasons set forth herein, the remaining parties to this action, the United States
2 and Dan K. Shaw, by and through undersigned counsel, hereby submit the following Joint
3 Motion and Stipulation (1) to suspend the deadline for submission of proposed Joint Pretrial
4 Order set by the Court's Minute Order [Docket No. 125] entered on March 18, 2011, and (2) to
5 vacate the Status Conference scheduled by the Court set by the Court's Minute Order [Docket
6 No. 124] entered on March 18, 2011, and (3) to direct the parties to submit a proposed
7 Scheduling Order with respect to the submission of a proposed Joint Pretrial Order, approximate
8 trial date [subject to the Court's calendar], and any other intervening dates or deadlines
9 associated therewith.
10

11 This Joint Motion and Stipulation is based upon the following facts:

12 1. On March 9, 2011, the Court issued its Order [Docket No. 123] granting in part
13 and denying in part the United States' Motion for Summary Judgment.
14

15 2. Undersigned counsel for Dan K. Shaw ("Shaw") is no longer associated with a
16 multi-practitioner law firm, but is now a sole practitioner. (See, Rooker Declaration attached
17 hereto.)
18

19 3. Undersigned counsel for Shaw is required to undergo a surgical procedure for a
20 condition diagnosed on Wednesday, March 16, 2011, and was informed on March 21, 2011 by
21 the surgeon who is to perform the procedure that the earliest date available therefor is April 19,
22 2011. Until the surgery is completed, counsel for Shaw will not know the prognosis or recovery
23 period associated with the surgery. (See, Rooker Declaration.)
24

25 4. In light of the foregoing circumstances of Shaw's counsel, and considering the
26 tasks required to be completed by LR 26-1 to prepare the proposed Joint Pretrial Order, the
27 parties are in agreement that the most reasonable course is for the Court to suspend the current
28 proposed Joint Pretrial Order deadline of April 18, 2011, vacate the Status Conference now set

1 for April 28, 2011, and direct the parties to submit a comprehensive proposed Scheduling Order
2 with respect to all dates and deadlines associated with this case by April 28, 2011. The
3 foregoing procedure will also enable Shaw to pursue efforts already underway to engage the
4 services of replacement counsel, should the substitution of counsel be required.

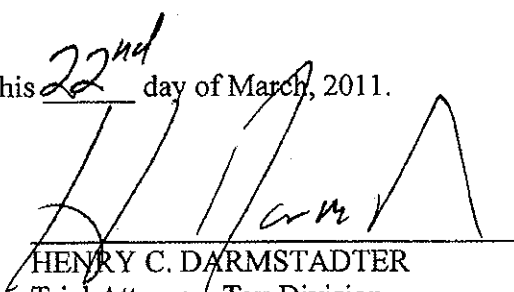
5 For the foregoing reasons, the parties jointly move, and stipulate, that the Court enter its
6 Order as follows:
7

8 A. Suspending the deadline for submission of the proposed Joint Pretrial Order now
9 set for April 18, 2011; and

10 B. Vacating the Status Conference now scheduled for April 28, 2011; and

11 C. Directing the parties to submit a proposed comprehensive Scheduling Order on or
12 before April 28, 2011.
13

14 RESPECTFULLY SUBMITTED this 22nd day of March, 2011.

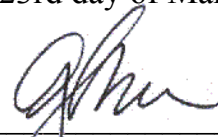
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IT IS SO ORDERED this 23rd day of March, 2011.



Gloria M. Navarro
United States District Judge

DECLARATION OF C. KEITH ROOKER

I, C. Keith Rooker, make the following Declaration under penalty of perjury. I am competent to testify to the facts set forth in this Declaration, and if called to testify would testify to the truth of the facts set forth herein.

1. I am a member in good standing of the Nevada State Bar, and of the Bar of the United States District Court for the District of Nevada, and am counsel for Dan K. Shaw (“Shaw”) in the matter of *O’Brien v. United States of America*, Case No. 2:07-cv-00986-GMN-GWF (“*O’Brien*”) pending in the United States District Court for the District of Nevada.

2. This Declaration is submitted in support of the Joint Motion, Stipulation, and Proposed Order to Suspend Joint Pretrial Order Deadline, Vacate Status Conference Setting, and Direct Parties to Submit Proposed Scheduling Order submitted by counsel for the United States and Shaw (the “Joint Motion and Stipulation”), the only parties whose claims and defenses remain at issue in *O’Brien*.

3. On Wednesday, March 16, 2011, I was informed by Sanci Leachman, M.D. (a physician on the staff of the Huntsman Cancer Institute at the University of Utah Health Care Center in Salt Lake City, Utah), of the pathology report on a tissue biopsy she had taken from me the prior week. She informed me that the report stated that the tissue was from a tumor that contained malignant cells, and that surgical removal would be required.

4. Dr. Leachman recommended that the required surgery be performed by Glen Bowen, M.D. (a surgeon on the staff of the Huntsman Cancer Institute as well), advised me that she would immediately submit the required information to Dr. Bowen, and told me that the surgery should be performed as soon as Dr. Bowen’s schedule would permit.

5. On Monday, March 21, 2011, as directed by Dr. Leachman, I contacted Dr. Bowen's office. After a review of Dr. Bowen's surgical calendar, I was scheduled for the required surgery on April 19, 2011, the earliest date of his availability. I was also advised that I had been placed on the waiting list, and that if there were a cancellation that would permit the surgery to be performed earlier, I would be informed. Owing to the foregoing, the actual date of the surgery remains uncertain. I have been counseled by Dr. Leachman and by Dr. Bowen's office staff to keep my calendar "flexible" to enable me to take advantage of any earlier date of Dr. Bowen's availability.

6. Dr. Leachman has advised me that the nature of the tumor, combined with early detection and treatment, are such that a good surgical outcome may be anticipated. She has also advised me that the actual post-surgical prognosis and recovery period cannot be predicted with assurance until the surgery has been completed.

7. During the period beginning in late 2009 it became necessary owing to economic conditions to terminate the practice of my former law firm, Rooker Rawlins LLP. The firm's Salt Lake City office was closed on December 1, 2009. The firm's last employed attorney, Michael S. Kelley, was able to find another position and left the firm in August, 2010. My remaining partner, Michael D. Rawlins, found another position and left the firm on September 30, 2010. Over the ensuing months through January, 2011, I devoted substantial time to dealing with matters required to be addressed by the departure of all of the firm's attorneys other than me, and the management of the multiple issues related to the firm's impending closure, including the disposition of many of my litigation files. The operations of the firm were effectively terminated at the end of January, 2011.


8. I am now engaged in practice as a solo practitioner through C. Keith Rooker pllc, a Nevada professional limited liability company, of which I am the sole member, and which has no employees.

9. I have filed with the Court and served on the parties to *O'Brien* a Notice of Change of Firm Name, Changes of Office and Mailing Addresses, and Changes of Telephone and Facsimile Numbers.

10. Owing to the combined circumstances related above, I have conferred with Shaw in some detail on the subject of his possible engagement of other counsel either to substitute for me or, if it is possible for me to continue my participation, to associate with me, in the continuing work required to complete preparation for trial, and the actual trial, of *O'Brien*. Shaw has begun his efforts to identify other counsel who may be in a position to either substitute or associate in on his behalf in *O'Brien*. I am and will be assisting him in those efforts.

11. The Joint Motion and Stipulation is not filed for purposes of delay or any other improper purpose. I take this opportunity to express my thanks to lead counsel for the United States, Henry Darmstadter, for his courtesy, and for his personal and professional understanding of the foregoing circumstances, in joining with me in filing the Joint Motion and Stipulation.

Executed this 22nd day of March 2011.


C. Keith Rooker