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JS-6

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

AMBER WALLISA, individually and  
as successor-in-interest to Decedent  
STEPHEN SCHENCK,

Plaintiff,

v.

CITY OF HESPERIA, a municipal  
corporation; COUNTY OF SAN  
BERNARDINO, a municipal  
corporation; TOWN OF APPLE  
VALLEY, a municipal corporation;  
JONATHAN FLORES, individually  
and his official capacity as a deputy  
Sheriff for the COUNTY OF SAN  
BERNARDINO Sheriff's Department;  
DOES 1-10, inclusive; individually and  
in their capacities as law enforcement  
agents and/or personnel for the  
COUNTY OF SAN BERNARDINO  
Sheriff's Department; DOES 11-20,  
inclusive; individually and in their  
capacities as law enforcement agents  
and/or personnel for the TOWN OF  
APPLE VALLEY Police Department;  
DOES 21-30, inclusive; individually  
and in their capacities as law  
enforcement agents and/or personnel for  
the CITY OF HESPERIA Police  
Department.

Defendants.

Case No. 5:16-cv-2638 FMO (KKx)  
[Hon. Fernando M. Olguin, Dist.  
Judge; Hon. Kenly K. Kato, M. Judge]

**~~[PROPOSED]~~ ORDER FOR  
PARTIAL DISMISSAL WITH  
PREJUDICE AS TO DEPUTY  
DEFENDANTS AND VACATING  
TRIAL AND PRE-TRIAL  
CONFERENCE DATES AND  
ASSOCIATED DEADLINES RE  
PARTIES' NOTICE OF  
CONDITIONAL SETTLEMENT**

Complaint Filed: Dec.27, 2016  
Final Pre-Trial Conf.: April 8, 2019  
Trial Date: April 23, 2019

1 PURSUANT TO THE STIPULATION OF THE PARTIES, and pursuant to  
2 the Court’s inherent and statutory authority, including but not limited to the Court’s  
3 authority under the applicable Federal Rules of Civil Procedure and the United  
4 States District Court, Central District of California Local Rules; after due  
5 consideration of all of the relevant pleadings, papers, and records in this action; and  
6 upon such other evidence or argument as was presented to the Court; Good Cause  
7 appearing therefor, and in furtherance of the interests of justice, the Court hereby  
8 Orders:

9 1. The Court hereby takes judicial notice of the fact that the parties have  
10 reached a conditional settlement of the entire action.

11 2. The Court hereby vacates the Trial date and the final Pre-Trial  
12 Conference date. There Court hereby vacates its Order dated March 25, 2019 [Dkt.  
13 Doc. 143] as being moot. To the extent there are any other Trial-related deadlines  
14 or requirements in this action, the parties are hereby excused from such and such are  
15 hereby vacated.

16 3. The Court hereby **dismisses with prejudice** plaintiff’s claim for  
17 **Excessive Force** pursuant to 42 U.S.C. § 1983 in violation of the Fourth  
18 Amendment to the U.S. Constitution by plaintiff AMBER WALLISA against  
19 defendants JONATHAN FLORES, SPENCER WILT, and KENT WATSON  
20 [Second Claim for Relief] – in its entirety, and as to the Deputy Defendants.

21 4. The Court hereby **dismisses with prejudice** plaintiff’s claim for  
22 **Wrongful Death** pursuant to 42 U.S.C. § 1983 in violation of the Fourth and  
23 Fourteenth Amendment to the U.S. Constitution by plaintiff AMBER  
24 WALLISA against defendants JONATHAN FLORES, SPENCER WILT, and  
25 KENT WATSON [Third Claim for Relief] – in its entirety, and as to the Deputy  
26 Defendants.

27 5. The Court hereby **dismisses with prejudice** plaintiff’s claim for  
28 **Violations of Plaintiff’s Civil Rights to Familial Relationship** pursuant to 42

1 U.S.C. § 1983 in violation of the Fourteenth Amendments to the U.S. Constitution  
2 by plaintiff AMBER WALLISA against defendants JONATHAN FLORES,  
3 SPENCER WILT, and KENT WATSON [Fourth Claim for Relief] – in its entirety,  
4 and as to the Deputy Defendants.

5 6. The Court hereby **dismisses with prejudice** plaintiff’s claim for  
6 **Violations of Fourth Amendment – Failure to Render Medical Care/Denial of**  
7 **Medical Care** pursuant to 42 U.S.C. § 1983 in violation of the Fourth Amendment  
8 to the U.S. Constitution by plaintiff AMBER WALLISA against defendants  
9 JONATHAN FLORES, SPENCER WILT, and KENT WATSON [Sixth Claim for  
10 Relief] – in its entirety, and as to the Deputy Defendants.

11 7. The Court hereby **dismisses with prejudice** plaintiff’s claim for  
12 **Wrongful Death - Negligence** pursuant to California law (including Cal. Gov.  
13 Code §§ 377.60 & 377.61) by plaintiff AMBER WALLISA against defendants  
14 JONATHAN FLORES, SPENCER WILT, and KENT WATSON [Seventh Claim  
15 for Relief] – as to the Deputy Defendants only.

16 8. The Court hereby **dismisses with prejudice** plaintiff’s claim for  
17 **Violation of Decedent's Rights to Enjoy Civil Rights** pursuant to California Civil  
18 Code § 52.1 (**Bane Act**) by plaintiff AMBER WALLISA against defendants  
19 JONATHAN FLORES, SPENCER WILT, and KENT WATSON [Eighth Claim for  
20 Relief] – as to the Deputy Defendants only.

21 9. The Court hereby **dismisses with prejudice** plaintiff’s claim for  
22 **Intentional Infliction of Emotional Distress** – Survival claim, pursuant to  
23 California law by plaintiff AMBER WALLISA against defendants JONATHAN  
24 FLORES, SPENCER WILT, and KENT WATSON [Ninth Claim for Relief] – as to  
25 the Deputy Defendants only.

26 10. The Court hereby **dismisses with prejudice** plaintiff’s claim for  
27 **Assault and Battery** – Survival Claim, pursuant to California law (including Cal.  
28 Gov. Code § 820) by plaintiff AMBER WALLISA against defendants JONATHAN

1 FLORES, SPENCER WILT, and KENT WATSON [Tenth Claim for Relief] – as to  
2 the Deputy Defendants only.

3 11. To the extent that plaintiff alleges any other claims against the Deputy  
4 Defendants in this action, plaintiff hereby stipulates (and the signatory parties  
5 stipulate) to dismiss with prejudice any and all such claims and causes of action.  
6 The Court hereby takes judicial notice of the fact that the parties have stipulated that  
7 defendant the County of San Bernardino shall remain a defendant in this action until  
8 the conditional settlement of the parties has been finalized and the parties request a  
9 further dismissal from this Court.

10 12. The Court hereby further orders that in the event that the  
11 aforementioned conditional settlement is not approved by the County of San  
12 Bernardino’s Board of Supervisors, the parties have stipulated and the Court hereby  
13 orders that – notwithstanding any other/prior court order or stipulation – plaintiff  
14 shall be permitted to file an amended pleading withdrawing this stipulation and  
15 reinstating the Deputy Defendants as defendants in this action, and all of the  
16 formerly dismissed claims against such defendants as stated herein above shall be  
17 reinstated, so that this partial dismissal with prejudice shall be deemed set aside and  
18 vacated.

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13. Furthermore, the Court acknowledges the parties' agreement to mutually waive and release all costs, court fees, and attorneys' fees arising out of this litigation between these parties thereto as to the aforementioned dismissed claims.

14. The clerk shall administratively close the case pending submission of final approval of the settlement.

**IT IS SO ORDERED.**

DATED: April 2, 2019

**UNITED STATES DISTRICT COURT,  
CENTRAL DISTRICT OF CALIFORNIA**

By: \_\_\_\_\_ /s/  
Hon. Fernando M. Olguin,  
UNITED STATES DISTRICT JUDGE