

1 **AUCHARD & STEWART**
 A PROFESSIONAL CORPORATION
 2 ATTORNEYS AT LAW
 2377 W. SHAW, SUITE 106
 3 FRESNO, CALIFORNIA 93711-3438
 TELEPHONE (559) 432-0991
 4 FAX (559) 432-1025

5 Paul Auchard

6 Attorneys for Defendants, GOLDEN VALLEY UNIFIED SCHOOL DISTRICT, TIMOTHY HAYES,
 7 KULJEET MANN AND CHRIS IMPERATRICE

8 **IN THE UNITED STATES DISTRICT COURT**
 9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

10 JOHN ROE, minor, by and through his Guardian)
 Ad Litem, SHEILA IRENE CALLAHAN,)
 11)
 Plaintiff,)
 12)

13 vs.)

14 GUSTINE UNIFIED SCHOOL DISTRICT;)
 GOLDEN VALLEY UNIFIED SCHOOL)
 DISTRICT; KYLE MATTHEW FISCHER, aka)
 15 KYLE SIMMONS, a minor; MICHAEL FISCHER,)
 aka MICHAEL SIMMONS, a minor; KELLY)
 16 SIMMONS; JASON SIMMONS; MATTHEW)
 McKIMMIE a minor; MYRNA TYNDAL;)
 17 TOMMY SAN FELIPO, a minor; FRANK)
 HUDSON; BETTY HUDSON; CARL SCUDDER;)
 18 JASON SPAULDING; ANTHONY SOUZA;)
 ADAM CANO; TIMOTHY HAYES; KULJEEP)
 19 MANN; CHRIS IMPERATRICE, AND DOES 1-)
 20 200,)
 Defendants.)
 21)

CASE NUMBER:

1:07-CV-00796-OWW-DLB

**THIRD AMENDED STIPULATION AND
 ORDER TO CONTINUE DISCOVERY
 AND TRIAL DATES**

22 Pursuant to the local rules of United States District Court of the Eastern District of California,
 23 Rule 83-143, Plaintiff, JOHN ROE, a minor, by and through his Guardian ad Litem, SHEILA IRENE
 24 CALLAHAN, and Defendants, GOLDEN VALLEY UNIFIED SCHOOL DISTRICT, TIMOTHY
 25 HAYES, KULJEET MANN AND CHRIS IMPERATRICE, GUSTINE UNIFIED SCHOOL
 26 DISTRICT, JASON SPAULDING, ANTHONY SOUZA, ADAM CANO, and CARL SCUDDER,
 27 (“Defendants”) through their counsel of record,

28 ///

1 **STIPULATE AND AGREE AS FOLLOWS:**

2 1. On October 11, 2007 the Court entered a Scheduling Conference Order, which was
3 later amended on August 19, 2008, and May 4, 2009, such that the following dates and deadlines
4 in this matter are now in effect:

5 Discovery Deadline (non-expert): October 2, 2009

6 Expert Disclosure Deadline: August 28, 2009

7 Discovery Deadline (Expert): October 1, 2009

8 Non-Dispositive Motion Filing Deadline: September 2, 2009

9 Dispositive Motion Filing Deadline: April 30, 2009

10 Pre-trial Conference: October 5, 2009

11 Trial Date: November 3, 2009

12 2. The parties have worked together in a cooperative manner in conducting discovery
13 in this matter. Depositions of IMPERATRICE, MANN and HAYES were taken in June and July
14 2008. The deposition of Plaintiff ROE and his Guardian and mother SHIELA CALLAHAN were
15 taken in November 2008 in Arizona. It was agreed after the deposition of the Plaintiff that a
16 mediation should be pursued. The above-named stipulating parties attended a Mediation on March
17 10, 2009. While significant progress was made, the matter was not resolved at mediation. At and
18 after the mediation counsel for the above-named stipulating parties discussed that GUSTINE
19 UNIFIED SCHOOL DISTRICT and CARL SCUDDER would be filing motions for summary
20 judgment and agreed those motions would be filed by April 30, 2009, with the motions to be heard
21 on June 30, 2009. The parties agreed to limit their discovery prior to the hearing on the dispositive
22 motions to that necessary to support or oppose said motions. Accordingly, the motions for summary
23 judgment were filed on April 30, 2009, and the only discovery conducted after the mediation has
24 been the depositions of ADAM CANO and CARL SCUDDER, both coaches employed by
25 GUSTINE UNIFIED SCHOOL DISTRICT at the time of the incident which is the subject of this
26 suit, which depositions were taken by Plaintiff on June 23, 2009.

27 3. Prior to the deposition of defendant, Carl Scudder, on June 23, 2009, defendant,
28 GOLDEN VALLEY UNIFIED SCHOOL DISTRICT, had produced in its Rule 26 disclosure a form

1 of liability waivers to be signed by parents/students attending the football camp at issue in this case,
2 but despite other discovery performed, there was no evidence prior to the deposition of Carl Scudder
3 that plaintiff, John Roe, or his parents had signed such a liability waiver form. At the time of the
4 deposition of defendant Carl Scudder on June 23, 2009, his counsel advised that it had just come to
5 his attention that Mr. Scudder had, after leaving Gustine High as a teacher/coach, taken certain
6 liability waiver forms with him and had been keeping those documents at his residence. On June 23,
7 2009, counsel for Carl Scudder for the first time produced a liability waiver form which was, in fact,
8 signed by the parent of Plaintiff, John Roe. At that time counsel for Golden Valley Unified School
9 District (of which Liberty High School is a part) advised all counsel that he would seeking to amend
10 his answer to raise the liability waiver form as an affirmative defense and would seek relief
11 extending the date for filing dispositive motions to allow Golden Valley Unified School District and
12 its employees to file a motion for summary judgment based on this affirmative defense. The parties
13 agreed that Golden Valley Unified School District and its employees should be allowed to amend
14 its answer to raise the liability waiver as an affirmative defense and further agreed that, as set forth
15 below, the date for filing dispositive motions should be extended and reset to allow Golden Valley
16 Unified School District and its employees to file a motion for summary judgment

17 3. When the motions for summary judgment were filed on April 30, 2009, the hearing date
18 was set for July 20, 2009. That date was continued by the court and the matter is now set for hearing
19 on August 10, 2009. As set forth above, the present discovery deadline (Non-expert) is set for
20 October 2, 2009. The parties believe that the present schedule does not allow adequate time for
21 discovery. In discussions among counsel there was a general consensus that, in addition to any other
22 discovery which may be needed, as many as 30 additional depositions may need to be taken after the
23 court rules on the summary judgment motion and this discovery cannot be accomplished under the
24 present schedule. Defendants believe that the discovery cutoff, trial and other pretrial dates should
25 be continued as set forth below to allow for such discovery.

26 4 It is believed that the unrepresented, individual Defendants who are not named above
27 do not have insurance coverage available to cover any judgment in this matter, and said
28 unrepresented, individual Defendants have not attended any depositions, propounded any discovery

1 DATED: September 9, 2009. McCORMICK, BARSTOW, SHEPPARD,
2 WAYTE & CARRUTH LLP

3 By /s/ Mart B. Oller IV
4 Mart B. Oller IV
5 Attorneys for Defendants, GUSTINE UNIFIED SCHOOL
6 DISTRICT, JASON SPAULDING, ANTHONY SOUZA
7 and ADAM CANO

8 DATED: September 9, 2009. TUTTLE & McCLOSKEY

9 By /s/ James McBrearty
10 James McBrearty
11 Attorneys for CARL SCUDDER

12 DATED: September 9, 2009. ALLEN & FAGALDE, ALBERTONI & FLORES

13 By /s/ Kimberly Flores
14 Kimberly Flores
15 Attorneys for Plaintiff, JOHN ROE, by and through
16 his Guardian ad Litem, SHEILA CALLAHAN

17 DATED: September 9, 2009. By _____
18 KYLE MATTHEW FISHER, aka
19 KYLE SIMMONS, Pro Se

20 DATED: September 9, 2009. By _____
21 MICHAEL FISHER, aka
22 MICHAEL SIMMONS, Pro Se

23 DATED: September 9, 2009. By _____
24 JASON SIMMONS, Pro Se

25 DATED: September 9, 2009. By _____
26 KELLY SIMMONS, Pro Se

27 DATED: September 9, 2009. By _____
28 MATTHEW McKIMMIE, Pro Se

DATED: September 9, 2009. By _____
MYRNA TYNDAL, Pro Se

DATED: September 9, 2009. By _____
TOMMY SAN FELIPPO, Pro Se

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED: September 9, 2009. By BETTY HUDSON, Pro Se

DATED: September 9, 2009. By FRANK HUDSON, Pro Se

IT IS SO ORDERED.

Dated: September 11, 2009

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE