

**FILED**

SEP 14 2009

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
BY \_\_\_\_\_  
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6 Attorneys for Defendant ROCHESTER MEDICAL CORPORATION,  
a Minnesota corporation

8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA

11 TIMOTHY CRAYTON,  
12 Plaintiff,

13 v.

14 ROCHESTER MEDICAL  
CORPORATION, a Minnesota  
15 corporation; and JOHN DOE  
DISTRIBUTOR,  
16

17 Defendants.

CASE NO. 1:07 CV-1318-OWW-GSA

The Hon. Oliver W. Wanger  
[Courtroom 3]

Magistrate Judge Gary S. Austin  
[Courtroom 10]

ACTION FILED: June 14, 2007  
TRIAL: May 25, 2010

**DEFENDANT ROCHESTER  
MEDICAL CORPORATION'S EX  
PARTE APPLICATION FOR  
AMENDMENT TO SCHEDULING  
CONFERENCE ORDER**

20 Defendant ROCHESTER MEDICAL CORPORATION ("ROCM" or  
21 "Defendant") pursuant Local Rule 6-144 (c) and (d), hereby applies *ex parte* for an  
22 order: (1) amending the non-expert discovery cut-off, set forth in the court's  
23 Scheduling Conference Order ("Order"), dated March 27, 2009, from September 1,  
24 2009 up through and including September 15, 2009.

25 Due to the incarceration of the Plaintiff, Timothy Crayton, at Kern Valley  
26 State Prison, defense counsel does not have immediate access to him and/or an  
27 ability to communicate directly with him, other than via U.S. Mail. In light of the  
28

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1 immediacy of the relief requested the Defendant did not have time to meet and  
2 confer, through this method of communication, in order to ascertain whether or not  
3 the Plaintiff has an objection to the Defendant's request herein. Defense counsel, did  
4 however, fax notice of this Application to the prison's Litigation Coordinator, Mr.  
5 Will Adams, on August 26, 2009, with a request that the same be forwarded to Mr.  
6 Crayton as soon as possible. (Spodick Decl. ¶2.)

7 Defendant has not sought or obtained any previous extensions of time.  
8 (Spodick Decl. ¶3.)

9 Such an extension is timely and good cause exists for *ex parte* relief because:

10 (a) As aforementioned, the plaintiff, Timothy Crayton ("Plaintiff") is  
11 incarcerated at Kern Valley State Prison ("Prison"), and Defendant has been advised  
12 by Sally Mendoza, the Office Technician for the prison's Litigation Coordinator, that  
13 receipt of a second security clearance<sup>1/</sup>, necessary to enter the prison, would not  
14 likely be possible before September 1, 2009. (Spodick Decl. ¶ 4.)

15 Defendant has been engaged in written discovery, including the  
16 subpoenaing of Plaintiff's medical records from the prison, since early June of 2009.  
17 Defendant also subpoenaed the prison's records regarding the purchase and  
18 subsequent distribution of male external catheters to its inmates, in an attempt to  
19 identify the lot number, as well as the distributor, of the product Plaintiff alleges  
20 caused him injury. Per the request of Mr. Will Adams, the prison's Litigation  
21 Coordinator, the subpoenas for the Plaintiff's records, as well as the prison's records,  
22 were not only served on the prison's litigation office, but also on the prison's  
23 counsel, Martin Dodd, Esq, of Futterman Dupree Dodd Croley Maier. Counsel for  
24 Defendant was advised that before responsive documents could be served regarding  
25 the subpoenas, prison counsel would have to review the same, and thereafter either  
26 approve the release of the documents or object to their production. As such, courtesy

27 \_\_\_\_\_  
28 <sup>1/</sup>Defendant initially obtained security clearance to enter Kern Valley State  
Prison, regarding this case in early to mid 2008.

1 copies of the aforementioned subpoenas were sent to Mr. Dodd, on or about June 10,  
2 2009. Service of documents responsive to the Defendant's subpoenas did not begin  
3 until August 5, 2009. As of August 18, 2009, the Defendant was still receiving  
4 documents and information responsive to its subpoenas. (Spodick Decl. ¶ 5.)

5 As soon as possible, following the Defendant's receipt and review of the  
6 records it had received, defense counsel attempted to notice the deposition of the  
7 Plaintiff, as well as Persons Most Knowledgeable on behalf of the Prison, to go  
8 forward on August 28, 2009 or September 1, 2009, in order to comply with the  
9 scheduling deadlines set forth in the Order for this case. However, in attempting to  
10 coordinate these dates with the Prison, defense counsel was advised by Ms.

11 Mendoza, that in addition to the requirement of obtaining security clearance to enter  
12 the Prison, there are additional procedural obstacles to noticing the proceeding that  
13 are beyond the defense counsel's control. These issues include unanticipated delays  
14 in getting the aforementioned security clearance, now that mandatory furlough days  
15 are in effect for prison faculty. Additionally, the Prison's conference room from  
16 which the deposition must take place, as well as the necessary prison security, are not  
17 available on August 28, 2009.<sup>2/</sup> Additionally, the Defendant has been advised that  
18 fees for security during the deposition must be paid directly to the Prison, at least  
19 two-weeks in advance of any deposition proceeding. (Spodick Decl. ¶ 6.)

20 After coordinating schedules with the Prison litigation department, defense  
21 counsel has been advised that the deposition of the Plaintiff can go forward on  
22 September 9, 2009, with the approval of the Court requested herein. (Defendant is  
23 still waiting to hear if the Persons Most Knowledgeable on behalf of the prison will  
24 also be available on this date.) (Spodick Decl. ¶ 7.)

25 ///

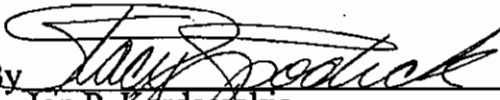
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28 <sup>2/</sup>The conference room and prison security were available for September 1, 2009, however Ms. Mendoza was doubtful that the security clearance could be obtained by this date.

1 In light of the foregoing unforeseen circumstances experienced in their defense  
2 of this case, the Defendant respectfully requests that the Order be amended solely to  
3 allow for the deposition of: (1) Plaintiff, Timothy Crayton; and (2) the Persons Most  
4 Knowledgeable on behalf of Kern Valley State Prison, to go forward up through and  
5 including September 15, 2009.

6 It is respectfully submitted.

8 DATED: August 27, 2009

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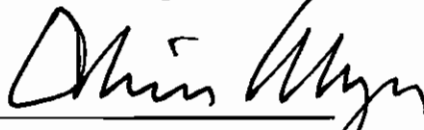
9  
10 By   
11 Jon P. Kardassakis  
12 Stacy C. Spodick  
13 Attorneys for Defendant ROCHESTER  
14 MEDICAL CORPORATION, a Minnesota  
15 corporation

16 **ORDER**

17 Having considered Defendant's *ex parte* application for an extension of the  
18 non-expert discovery cut-off date, solely as to the depositions of: (1) Timothy  
19 Crayton; and (2) Persons Most Knowledgeable on behalf of Kern Valley State  
20 Prison, and finding good cause therefor,

21 IT IS HEREBY ORDERED that Defendant have to and including  
22 September 23, 2009, by which to complete said non-expert discovery.

23 DATED: September 9, 2009

  
United States District Judge

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1 **FEDERAL COURT PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 At the time of service, I was over 18 years of age and not a party to the action.  
4 My business address is 221 North Figueroa Street, Suite 1200, Los Angeles,  
5 California 90012. I am employed in the office of a member of the bar of this Court  
6 at whose direction the service was made.

7 On August 27, 2009, I served the following document(s): **DEFENDANT**  
8 **ROCHESTER MEDICAL CORPORATION'S EX PARTE APPLICATION**  
9 **FOR AMENDMENT TO SCHEDULING CONFERENCE ORDER.** I served  
10 the documents on the following persons at the following addresses on the attached  
11 service list (including fax numbers and e-mail addresses, if applicable):

12 The documents were served by the following means:

- 13 [X] (BY U.S. MAIL) I enclosed the documents in a sealed envelope or package  
14 addressed to the persons at the addresses listed above and I deposited the  
15 sealed envelope or package with the U.S. Postal Service, with the postage fully  
16 prepaid.
- 17 [X] (BY COURT'S CM/ECF SYSTEM) Pursuant to Local Rule, I electronically  
18 filed the documents with the Clerk of the Court using the CM/ECF system,  
19 which sent notification of that filing to the persons listed below.

20 I declare under penalty of perjury under the laws of the State of California that  
21 the above is true and correct.

22 Executed on August 27, 2009, at Los Angeles, California.

23   
24 Antoinette I. Muriel

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**SERVICE LIST**

*Timothy Crayton v. Rochester Medical Corporation, et al.*

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*Plaintiff In Pro Per*

9  
10 William Adams  
11 Kern Valley State Prison  
12 P.O. Box 6000  
13 Delano, California 93261  
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*Litigations Coordinator*

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