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FRANK MENDOZA

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KRISTAL MADRID, individually, and as
Personal Representative of the Estate of
PEDRO MADRID,

Plaintiffs,

vs.

CITY OF FRESNO, a municipal
corporation; JERRY DYER, in his capacity
as Chief of Police for the CITY OF
FRESNO; DOES 1-100, individually and in
their official capacities as police officers for
the CITY OF FRESNO,

Defendants.

Case No.:
1: 08-CV-00098-OWW-(SMS)

**STIPULATION FOR AN
ORDER MODIFYING THE
CASE MANAGEMENT
SCHEDULE TO CONTINUE
THE TRIAL DATE AND
RELATED PRETRIAL
DEADLINES IN LIGHT OF
SERIOUS ILLNESS OF
COUNSEL; ORDER**

[Declaration of Mildred K.
O'Linn filed concurrently
herewith]

Complaint Filed: 01/18/08
Trial Date: 10/05/10

TO THE HONORABLE COURT:

IT IS HEREBY STIPULATED by and between the parties to this action, by
and through their respective counsel of record, and pursuant to all applicable statutes

1 and rules, including but not limited to Federal Rules of Civil Procedure 16, 26, and
2 40, and/or, to the extent applicable, United States District Court, Eastern District of
3 California Local Rules 137, 143, 144, 230, and/or 240, as follows:

4 **GOOD CAUSE STATEMENT**

5 1. On October 15, 2009 [Dkt. Doc. 32], after lifting a stay of proceedings,
6 the honorable Court reset this matter for trial on October 5, 2010, with a discovery
7 cut-off deadline of June 14, 2010.

8 2. Plaintiffs' claims against the City of Fresno and/or its police officers
9 (hereafter the "City Defendants") are essentially civil rights and torts claims arising
10 from a use of force by City Defendants' police officers, against decedent Pedro
11 Madrid, on or about January 9, 2007.

12 3. However, since the Court issued the aforementioned scheduling order,
13 **counsel for defendant TASER has been diagnosed with breast cancer.** As a
14 result of this diagnosis and her related need for surgery and treatment, City
15 Defendants' lead trial counsel cannot substantially participate in any litigation matter
16 until at least mid-July, 2010. [See O'Linn Decl., ¶¶ 2-13.]

17 4. Ms. O'Linn has unique and specialized knowledge and expertise that the
18 City Defendants deem indispensable to their defense in this matter. Accordingly, at
19 her clients' request, Ms. O'Linn is seeking to continue all trial dates whose pretrial
20 deadlines and discovery needs would otherwise fall during her anticipated treatment
21 period. [See O'Linn Decl., ¶¶ 2-13.]

22 5. Pursuant to the Court's Order of October 15, 2009 [Dkt. Doc. 15], the
23 following dates and deadlines constituted the operative case management schedule:

24 Expert Disclosures and Reports Due:

25 April 14, 2010

26 Fact and Expert Discovery, Non-Dispositive Motion Filing Cut-Off:

27 June 14, 2010

28

1 Fact and Expert Discovery Cut-Off:

2 June 14, 2010

3 Dispositive Motion Filing Cut-Off:

4 July 2, 2010

5 Fact and Expert Discovery, Non-Dispositive Motion Hearing:

6 July 16, 2010, 9:00 a.m. before Magistrate Judge

7 Dispositive Motion Hearing Cut-Off:

8 August 2, 2010, 10:00 a.m. before District Judge

9 Settlement Conference Date:

10 None set

11 Pre-Trial Conference:

12 September 3, 2010, 2010, 12:00 p.m. before District Judge

13 JURY TRIAL:

14 October 5, 2010, 9:00 a.m.

15 **GOOD CAUSE: AUTHORITY OF THE COURT**

16 6. The Court is invested with inherent and statutory authority to provide
17 for the orderly conduct of the proceedings before it and to control its processes and
18 orders so as to make them conform to law and the interests of justice. *See, e.g.*, Fed.
19 R. Civ. P. 16, 40. Accordingly, the Court is empowered, in the exercise of its sound
20 discretion, to continue a trial date upon an affirmative showing that such continuance
21 is justifiable. *See Morris v. Slappy*, 461 U.S. 1, 11-12 (1983) (“Trial judges
22 necessarily require a great deal of latitude in scheduling trials.... Consequently,
23 broad discretion must be granted trial courts on matters of continuances....”); *United*
24 *States v. Garrett*, 170 F.3d 1143, 1144-1145 (9th Cir. 1999) (“when we review a
25 district court’s ruling granting or denying a motion for a continuance[,] the
26 applicable standard of review is abuse of discretion”).

27 7. However, where there is justifiable cause for the continuance, and where
28 substantial justice to the parties will be afforded by the continuance, the need for

1 judicial efficiency in expediting cases should not trump the justifiable cause for
2 continuing the trial dates. *See United States v. Nguyen*, 262 F.3d 998, 1003 (9th Cir.
3 2000) (disapproving trial judges “who seem[] ‘above all to be determined not to
4 disturb [the court’s] trial schedule’”). Indeed, where, under the totality of the
5 circumstances, a trial court’s denial of a motion for continuance amounts to “an
6 unreasoning and arbitrary ‘insistence upon expeditiousness in the face of a justifiable
7 request for delay[,]’” that denial may constitute a violation of that party’s due process
8 rights and, in a criminal case, of that party’s Sixth Amendment right to the assistance
9 of counsel. *See Morris*, 461 U.S. at 12; *Unger v. Sarafite*, 376 U.S. 575, 589 (1964);
10 *United States v. Gonzales*, 800 F.2d 895, 898 (9th Cir. 1986) (“Denial [of a motion
11 for continuance] is a constitutional violation only if the district court unreasonably
12 and arbitrarily insists upon ‘expeditiousness in the face of a justifiable request for
13 delay.’”); *see also Garrett*, 179 F.3d at 1145 (concluding that when denying the
14 motion for continuance, the district court should summarize its reasons on the record,
15 particularly where the right to counsel may be implicated).¹

16 8. In order to determine whether there is justifiable cause for a
17 continuance, courts may consider many factors, including: (1) “the nature of the case
18 and whether the parties have been allowed adequate time for trial preparation”;
19 (2) “the diligence of the party requesting the continuance”; (3) “the conduct of the
20 opposing party and whether a lack of cooperation has contributed to the need for a
21 continuance”; (4) “the effect of the continuance and whether delay will seriously
22 disadvantage either party”; and (5) “the asserted need for the continuance, with
23 weight to be given [to] sudden exigencies and unforeseen circumstances....” *See*

24
25 ¹ The purpose of “[d]elay reduction and calendar management” is to “promote the just
26 resolution of cases on their merits” and, thus, while “it is true that a trial judge must have control of
27 the courtroom and its calendar...it is equally true that, absent [a lack of diligence or other abusive]
28 circumstances..., a request for a continuance supported by a showing of good cause usually ought to
be granted.” *See Oliveros v. County of Los Angeles* (2004) 120 Cal.App.4th 1389, 1396, 1398
(overturning judgment entered after the trial court proceeded without defendant’s lead trial counsel,
who had become engaged in another conflicting trial, because “[a] civil litigant has a constitutional
right to be represented by counsel at trial [citations], a right which ought not to be abrogated simply
because the trial court concludes that the litigant’s counsel of choice ‘take[s] on too many cases.’”)

1 *United States v. Bernhardt*, 642 F.2d 251, 252 (8th Cir. 1981) (citing *Unger*, 376
2 U.S. at 589); *cf. Ranson v. Brooks*, 2005 U.S. Dist. LEXIS 29545 (E.D. Pa. 2005)
3 (equating justifiable cause with a showing of good cause for a continuance); Cal. R.
4 Ct. 3.1332(c)-(d) (good cause for a trial continuance can include: the unavailability
5 of counsel due to trial calendar conflict, illness, or death as well as the inability to
6 otherwise obtain essential testimony or material evidence despite diligent efforts).
7 For example, justifiable cause can include a complete breakdown in the attorney-
8 client relationship such that, without a continuance, a criminal defendant would be
9 forced to defend himself at trial without the assistance of counsel. *See Nguyen*, 262
10 F.3d at 1003 (holding that defendant's Sixth Amendment right was violated when he
11 was denied a trial continuance after a complete breakdown in the attorney-client
12 relationship).

13 9. Good cause (justifiable cause) for a continuance exists here because
14 Ms. O'Linn's client has deemed her expertise and experience to be indispensable to
15 their defense of this matter and because her cancer treatment and recovery will make
16 her unable to address the litigation needs and issues of this case under the current
17 operative case management schedule and until at least mid-July, 2010. [*See O'Linn*
18 *Decl.*, ¶¶ 2-13.]

19 10. In light of the foregoing, the parties hereby stipulate that Good Cause
20 exists to continue the trial date of this matter as specified herein below.

21 11. The parties further agree that no party shall oppose any motion or *ex*
22 *parte* application in pursuit of an order seeking the continuances at issue in this
23 Stipulation. The parties are unopposed to a motion to continue trial that conforms
24 with the terms of this Stipulation. The parties are unopposed to an *ex parte*
25 application for an order shortening the time for notice and hearing of such motion to
26 continue trial.

27 ///

28

ORDER

PURSUANT TO THE STIPULATION OF THE PARTIES, and pursuant to the Court's inherent and statutory authority, including but not limited to the Court's authority under Federal Rules of Civil Procedure 16, 26, and 40; after due consideration of all of the relevant pleadings, papers, and records in this action; and upon such other evidence or argument as was presented to the Court; Good Cause appearing therefor, and in furtherance of the interests of justice,

IT IS HEREBY ORDERED that:

The Court hereby modifies the case management schedule and resets the following dates and deadlines under this Case Management Scheduling Order:

Expert Disclosures and Reports Due:

November 1, 2010

Rebuttal, Counter, and Supplemental Expert Disclosures and Reports Due:

November 15, 2010

Fact and Expert Discovery, Non-Dispositive Motion Filing Cut-Off:

December 6, 2010

Fact and Expert Discovery Cut-Off:

December 6, 2010

Dispositive Motion Filing Cut-Off:

January 3, 2011

Fact and Expert Discovery, Non-Dispositive Motion Hearing:

January 17, 2011, 9:00 a.m. before Magistrate Judge

Dispositive Motion Hearing Cut-Off:

February 7, 2011, 10:00 a.m. before District Judge

Settlement Conference Date:

To be determined

Pre-Trial Conference:

March 11, 2011, 12:00 p.m. before District Judge

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Jury Trial:

April 12, 2011, 9:00 a.m.

NO FURTHER CONTINUANCES.

IT IS SO ORDERED.

Dated: March 26, 2010

/s/ OLIVER W. WANGER
UNITED STATES DISTRICT JUDGE