

1 Mr. Carey H. Johnson #40879
STAMMER, McKNIGHT, BARNUM & BAILEY LLP
2 2540 W. Shaw Lane, Suite 110
Fresno, California 93711
3 Telephone: (559) 449-0571
Facsimile: (559) 432-2619

4 Attorneys for Defendant, FRESNO COMMUNITY HOSPITAL AND MEDICAL CENTER,
5 dba COMMUNITY REGIONAL MEDICAL CENTER

6
7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF CALIFORNIA

9
10 MICHAEL TATER-ALEXANDER,)
11 Plaintiff,)

12 vs.)

13 LONNIE R. AMERJAN, CITY OF CLOVIS,)
TINA STIRLING, COMMUNITY)
14 REGIONAL MEDICAL CENTER, DR.)
15 THOMAS E. MANSFIELD, MARY JO)
16 GREENE, and, DOES 1 through 100,)
inclusive,)
17 Defendants.)

Case No.: 1:08-cv-00372-OWW-SKO

**FURTHER REVISED ORDER ON
DEFENDANT’S MOTION TO ADD
WITNESSES AND EVIDENCE, AND
ON OTHER MATTERS**

Hearing Date: March 31, 2011
Time: 12:00 noon
Courtroom: 3

Trial: May 3, 2011

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19)
20 On March 31, 2011, the motion of Defendant FRESNO COMMUNITY HOSPITAL
21 AND MEDICAL CENTER for an order permitting it to add witnesses and evidence, and
22 to consider other matters, came on for hearing before the undersigned upon proper
23 notice. Carey H. Johnson appeared in court on behalf of the defendant and moving
24 party, Fresno Community Hospital and Medical Center, and Andrew V. Stearns
25 appeared by telephone on behalf of plaintiff Michael Tater-Alexander. The Court,
26 having considered the motion, the points and authorities and declaration in support of
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1 the motion, the written opposition to the motion, and the comments of counsel, and
2 good cause appearing therefor, finds as follows:

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4 **DEFENDANT'S MOTION TO ADD WITNESSES AND EVIDENCE**

5 On February 28, 2011, Defendant FRESNO COMMUNITY HOSPITAL AND
6 MEDICAL CENTER filed a motion to permit it to add, and use at trial, witnesses Mary
7 Contreras and David Arguijo who were listed in the Supplemental Joint Pre-Trial
8 Statement but not previously disclosed, witnesses Ramon Flores, R.N., and Security
9 Officers Adam Perez, Brian Pond and Garrett Waterston who were not listed in the
10 Supplemental Joint Pre-Trial Statement or previously disclosed, and to utilize an
11 exemplar of the gown the plaintiff was asked to wear and an exemplar of a blanket
12 which was kept warm and available to persons who were cold in the Emergency
13 Department, which were not listed in the Supplemental Joint Pre-Trial Statement.
14 Defendant's motion was filed prior to the filing of the Final Pre-Trial Order.
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17 An oral request for the above was made by Mr. Johnson at the hearing on the
18 Motions in Limine which took place on February 18, 2011. At that time the Court
19 ordered that plaintiff's counsel could depose any of the potential witnesses. Andrew
20 Stearns advised in his opposition to defendant's motion that he had taken the
21 depositions of Mary Contreras and David Arguijo and that plaintiff did not oppose
22 calling those witnesses at trial, or using exhibits produced at their depositions at trial.
23 The testimony of those witnesses, and the use of the exhibits produced at those
24 depositions, shall be permitted at trial if otherwise relevant and admissible.
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1 Witnesses Ramon Flores, R.N., and Security Officers Adam Perez, Brian Pond
2 and Garrett Waterston were involved with plaintiff at Fresno Community Hospital and
3 Medical Center on September 6, 2009. There shall be no reference to plaintiff's visit to
4 Fresno Community Hospital and Medical Center on September 6, 2009, or to other
5 FCH&MC facilities on any dates after March 17-20, 2007, for the purpose of showing
6 that the plaintiff has come to Fresno Community Hospital and Medical Center facilities
7 on a number of occasions. Evidence for that purpose would be relevant to an
8 injunction. The jury will not decide on an injunction; that is for the Court to decide. If
9 necessary to the consideration of an injunction, such evidence can be introduced or
10 stipulated to after the jurors answer the questions which will be submitted to them.
11 Defendant's motion is granted, however, to the extent such witnesses may be used for
12 impeachment of the plaintiff.
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15 Defendant's motion to use as exemplars a gown of the type plaintiff declined to
16 wear on March 17 and 18, 2007, and a blanket of the type which could have been
17 provided, is granted subject to counsel laying the foundation through testimony that
18 the gown and blanket are the same type as those in use at Clovis Community Medical
19 Center in March, 2007. Plaintiff's counsel may inspect and photograph the gown and
20 blanket. Mr. Johnson brought the gown and blanket to the hearing and they were
21 described for the record.
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25 **HEARING ON MOTIONS IN LIMINE SET FOR APRIL 29, 2011, VACATED**

26 The hearing on Motions in Limine set for April 29, 2011, at 12:00 noon, is
27 vacated. Counsel advised the Court that there are only three Motions in Limine, of the
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1 many argued on February 18, 2011, for which the parties can not agree on the Court's
2 Order, and that counsel had agreed to brief their positions. Defendant's brief was filed
3 on March 4, 2011; plaintiff's brief was filed on April 14, 2011. The Court will issue a
4 ruling, or will schedule a hearing to discuss the motions further.
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7 **QUESTIONS TO BE SUMMITTED TO THE JURY**

8 The Court ordered counsel to work together in an effort to agree upon the
9 questions that will be submitted to the jury. Counsel have attempted to reach
10 agreement without success, and request the Court to take the issue up on May 2, 2011,
11 the day before trial. A copy of Defendant's proposed questions is attached.
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15 Dated: May 5, 2011

/s/ OLIVER W. WANGER
United States District Judge