

1 John Burton, State Bar No. 86029
 THE LAW OFFICES OF JOHN BURTON
 2 414 South Marengo Avenue
 Pasadena, California 91101

3 Telephone: (626) 449-8300
 4 Facsimile: (626) 449-4417
 E-Mail: jib@johnburtonlaw.com

5 Peter M. Williamson, State Bar No. 97309
 6 21800 Oxnard Street, Suite 305
 Woodland Hills, CA 91367

7 Telephone: (818) 226-5700
 8 Facsimile: (818) 226-5704
 E-Mail: pmw@williamson-krauss.com

9 Attorneys for Plaintiffs James Albert Wells and
 10 Judy Wells, and as the personal representatives
 of James Wells, deceased
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 13 **UNITED STATES DISTRICT COURT**
 14 **EASTERN DISTRICT OF CALIFORNIA**
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16 JAMES ALBERT WELLS AND
 17 JUDY WELLS,

18 Plaintiffs,

19 vs.

20 COUNTY OF STANISLAUS,
 et al.,

21 Defendants.
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Case No. 1:08-cv-1146 OWW GSA

**STIPULATION OF THE PARTIES
 TO A CONTINUANCE OF THE
 TRIAL DATE AND RELATED
 MODIFICATION OF THE COURT'S
 SCHEDULING ORDER;
 ORDER**

23 TO THE HONORABLE COURT:

24 **IT IS HEREBY STIPULATED** by and between the parties to the above entitled
 25 action, by and through their respective attorneys of record, and pursuant to United States
 26 District Court, Eastern District of California Local Rules 83-143 and 6-144(d), as follows:

27 1. The Court, in its scheduling order of November 20, 2008 set the following
 28 dates and deadlines that are relevant to this Stipulation:

Stipulation re: Trial Continuance and Related Motion of Court's Scheduling Order

E.D. Cal. Case No. 1:08-CV-01 146-OWW-GSA

1 Non-Expert Discovery Cut-Off date: September 1, 2009;
2 Expert Designation and Reports due: September 4, 2009;
3 Expert Counter-Designations due: October 5, 2009;
4 Expert Discovery Cut-Off date: November 5, 2009;
5 Non-dispositive Motion Filing Cut-Off date: November 20, 2009;
6 Dispositive Motion Filing Cut-Off date: January 5, 2010;
7 Pre-Trial Conference Date: March 15, 2010; and
8 Trial Date: April 27, 2010.

9 **GOOD CAUSE STATEMENT**

10 2. As the Court is aware, plaintiffs assert numerous civil rights claims against
11 defendant County of Stanislaus (“COUNTY”) and various other individual deputy sheriffs
12 and public works employees, as a result of an incident that resulted in the death of their
13 son, the decedent, James Wells.

14 3. Prior to the filing of the instant lawsuit, plaintiffs retained the professional
15 services of attorneys Michael F. Babitzke and Jeffrey A. Silvia to represent them. After
16 filing the instant action, Mr. Babitzke and Mr. Silvia took little or no action to advance this
17 litigation. For example, although numerous witnesses were present during the incident
18 that led to the death of the decedent, plaintiff’s counsel took no depositions of any of
19 these witnesses. Similarly, the two principal deputy sheriffs who were involved in this
20 incident refused to give statements to their departments concerning the circumstances that
21 led to the death of the decedent. Instead, they choose to invoke their Fifth Amendment
22 right to remain silent and avoid possible self-incrimination. Plaintiffs’ counsel never
23 noticed the depositions of these deputies in an attempt to learn their version of the events.

24 4. Thereafter, plaintiffs became dissatisfied with the progress of the litigation
25 and, on or about June 29, 2009, formally substituted the Law Offices of John Burton as
26 their counsel in place and instead of Messrs. Babitzke and Silva. Mr. Burton subsequently
27 requested that attorney Peter M. Williamson of the Law Firm of Williamson & Krauss
28 serve as his co-counsel. New counsel immediately sought to obtain the contents of the

1 file from prior counsel. On or about July 6, 2009, counsel received a box containing at
2 least 1,000 pages of loose documents which constituted the entire file of prior counsel.

3 5. At or around the time the case file was received, Mr. Burton and Mr.
4 Williamson were actively engaged and, for the most part consumed, by expert discovery
5 in the case of *Rosa vs. TASER, International*, Case No. C 05-03577 JF/HRL (United States
6 District Court, Northern District of California (San Jose), a complex products liability case
7 involving 20 designated experts. In both July and August, Mr. Burton and I spent
8 considerable time traveling to numerous places outside California to take the depositions
9 of the defense experts as well as attend the depositions of our own experts. Our travel
10 schedule required us to be out of the office on a regular basis. Mr. Burton is a sole
11 practitioner and Mr. Williamson has a single partner with limited support staff.

12 6. Because the expert deposition schedule in the Rosa case was so demanding,
13 it limited the time Messrs. Burton and Williamson had available to review the instant case
14 file.

15 7. In addition, on or about August 14, 2009, Mr. Burton suffered significant,
16 debilitating injuries when he was thrown from a horse. He suffered four rib fractures and
17 a comminuted fracture of his clavicle. He was hospitalized at Verdugo Hills Hospital in
18 Glendale, California for one week. Because of the painful nature of his injuries, Mr.
19 Burton has been forced to limit his working hours to only brief periods of time when he
20 can actively work on his cases. He has been advised by his doctors that it will take
21 between 3-4 months to fully recover from his injuries.

22 8. Mr. Williamson completed his own independent review of the Wells' case file
23 in mid-August, 2009. With Mr. Burton's consent, Mr. Williamson began his own
24 independent investigation of the case. Mr. Williamson personally traveled from Los
25 Angeles to Waterford, California (the location of the subject incident) and met with the
26 Wells family to review the facts and circumstances which led to the death of their son and
27 to obtain background information on the decedent. At that time, Mr. Williamson also
28 conducted a site inspection of the scene of this incident.

1 9. Shortly after meeting with the Wells family, Mr. Williamson and Mr. Burton
2 retained the services of a private investigator to conduct a more thorough investigation of
3 this incident. From July 31, 2009 to August 2, 2009, our investigator visited Waterford
4 and interviewed various eyewitnesses to the incident. However, as yet, we have not
5 obtained a report of these interviews from our investigator.

6 10. That as part of our assessment of the case file presented to us by prior
7 counsel, we conducted a cursory review of the Court's Scheduling Conference Order dated
8 November 20, 2008. On the first page of that Order, the discovery cut-off date is noted
9 to be November 5, 2009. That date was placed in our case calendars. Relying on that
10 date, we failed to note that the non-expert discovery cut-off was September 1, 2009 and
11 the cut-off date to disclose expert witnesses was September 4, 2009. However, even if
12 we had known about those dates, we would not have been prepared to comply with them
13 given our recent retention in the case.

14 11. That we were not even aware of our misreading of the Court's Scheduling
15 Conference Order until September 4, 2009 when Mr. Williamson placed a telephone call
16 to Dan Farrar, attorney for the defendants. Mr. Williamson placed that call in an effort
17 to obtain Mr. Farrar's agreement to extend the discovery cut-off date which we believed
18 was still two months away. During Mr. Williamson's call, Mr. Farrar advised him of the
19 September 1st and 4th cut-off dates.

20 12. That Mr. Williamson explained the reasons why we felt we had good cause
21 to request an extension of the discovery cut-offs and a continuance of the trial date.

22 13. Although no witness depositions have been scheduled at this time, it is
23 anticipated that within days we will be noticing the depositions of at least 20 witnesses.
24 These include eyewitnesses to the incident, the defendant deputy sheriffs, the defendant
25 public works employees, emergency medical technicians and various other health-care
26 providers who rendered medical assistance to the decedent at the time of this incident and
27 the Medical Examiner who performed the autopsy on the decedent's body.

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1 14. That Mr. Farrar has advised us that he has at least two trials scheduled in
2 October and November which will cause him to be unavailable for most of those months.
3 We further understand that Mr. Farrar is a sole practitioner who has no one else available
4 to attend depositions in the instant case.

5 15. In light of these circumstances, the parties agree that more time is needed to
6 adequately prepare this case for trial. Therefore, the parties believe that good cause exists
7 for the Court's current scheduling order to be modified.

8 **STIPULATION RE SCHEDULING ORDER**

9 12. Accordingly, the parties, by and through their respective attorneys of record,
10 hereby stipulate, and respectfully request that this Court modify its scheduling order of
11 November 20, 2008, to set the following dates and deadlines:

12 Discovery Cut-off date: March 31, 2010, or a date thereafter as the Court
13 shall deem appropriate (*discovery must be completed, not merely noticed or served, by this date*);

14 Expert Designations per FRCivP 26(a) February 28, 2010.

15 Expert Discovery Cut-Off date: April 30, 2010, or a date thereafter as the
16 Court shall deem appropriate (*discovery must be completed, not merely noticed or served, by this date*);

17 Non-Dispositive Motion Filing Cut-Off date: April 15, 2010,
18 Hearing Date May 14, 2010 in Courtroom 10, in accordance with the Local Rules;

19 Dispositive Motion Hearing Cut-Off date: May 31, 2010,
20 Hearing Date July 12, 2010 in Courtroom 3 in accordance with the Local Rules;

21 Settlement Conference date: July 29, 2010, in Courtroom 10, in accordance
22 with the Local Rules;

23 Pre-Trial Conference date: August 16, 2010 at 11:00AM in Courtroom 3.

24 Trial date: September 14, 2010.

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27 13. It is further agreed that this Stipulation may be signed in counterpart and that
28 a facsimile or electronic signature will be as valid as an original signature.

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IT IS SO STIPULATED.

DATED: September 10, 2009

LAW OFFICES OF DAN FARRAR

By: /s/ DAN FARRAR
DAN FARRAR
Attorney for Defendants

DATED: September 10, 2009

LAW OFFICES OF JOHN BURTON

By: /s/ JOHN BURTON
JOHN BURTON
Attorney for Plaintiffs
James & Judy Wells

DATED: September 7, 2009

WILLIAMSON & KRAUSS

By: /s/ PETER M. WILLIAMSON
PETER M. WILLIAMSON
Attorney for Plaintiffs
James & Judy Wells

ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED AS FOLLOWS:

1 Discovery Cut-off date is reset to March 31, 2010 (*discovery must be completed, not merely*
2 *noticed or served, by this date*);

3 Expert Discovery Cut-Off date is reset to April 30, 2010 (*discovery must be completed,*
4 *not merely noticed or served, by this date*);

5 Non-Dispositive Motion Filing Cut-Off date is reset to April 15, 2010;

6 Non-Dispositive Motion Hearing Date is reset May 14, 2010;

7 Dispositive Motion Hearing Cut-Off date is reset to May 31, 2010;

8 Dispositive Motion Hearing Date is reset July 12, 2010;

9 Settlement Conference date is reset to July 29, 2010;

10 Pre-Trial Conference date is reset to August 16, 2010; and

11 Trial date is reset to September 14, 2010.

12 **NO FURTHER CONTINUANCES.**

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14 **IT IS SO ORDERED.**

15 DATED: September 14, 2009

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/s/ OLIVER W. WANGER
HONORABLE OLIVER W. WANGER

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