

1 James J. Arendt, Esq. Bar No. 142937
 2 Brande L. Gustafson, Esq. Bar No. 267130

3 WEAKLEY & ARENDT, LLP
 4 1630 E. Shaw Avenue, Suite 176
 5 Fresno, CA 93710
 Telephone: (559) 221-5256
 Facsimile: (559) 221-5262

6 Attorneys for Defendant OFFICER CHRISTOPHER LONG

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

11 ROBERT MORRIS and MICHELLE)
 12 MORRIS, pro se)

13 Plaintiffs,)

14 vs.)

CASE NO. 1:08-CV-01422-OWW-MJS

**EX PARTE APPLICATION TO MODIFY
 SCHEDULING ORDER**

15 FRESNO POLICE DEPARTMENT,)
 16 OFFICER CHRISTOPHER LONG,)
 OFFICER JEREMY DEMOSS,)

17 Defendants.)
 18)

19 Defendant Christopher Long (“Defendant”) hereby submits the following ex parte application
 20 to modify the scheduling order to extend the non-expert discovery deadline to October 14, 2011, for the
 21 sole purpose of taking the deposition of Plaintiff’s wife, Michelle Morris.

22 The current non-expert discovery deadline in this matter is October 7, 2011. *See Scheduling*
 23 *Conference Order* (Doc. 113), p. 9:10-11. In accordance with this order, Defendant scheduled the
 24 deposition of Mrs. Morris, for October 7, 2011, at 9:30 a.m. *See Declaration of James J. Arendt*
 25 *(“Arendt Decl.”)*, para. 3. Mrs. Morris was personally served with a deposition subpoena. *Arendt Decl.*,
 26 para. 3. Mrs. Morris’ deposition was not scheduled until this date due to difficulties in effecting personal
 27 service of the deposition subpoena, and the fact that Plaintiff would not agree to voluntarily produce
 28 Mrs. Morris for her deposition. *Arendt Decl.*, para. 3.

1 On October 7, 2011, at approximately 8:55 a.m, Defendant’s counsel received a phone call from
2 Mrs. Morris. *Arendt Decl.*, para. 4. Mrs. Morris informed counsel that she was sick, and had been sick
3 for the last couple of days and would not be able to make it to her deposition. *Arendt Decl.*, para. 4.
4 Mrs. Morris further stated that she had gone to her physician on October 6, 2011, and that she had a note
5 documenting her illness. *Arendt Decl.*, para. 4. Mrs. Morris and Defendant’s counsel agreed that Mrs.
6 Morris would appear for her deposition at counsel’s office at 9:30 a.m., October 10, 2011. *Arendt Decl.*,
7 para. 4. Mrs. Morris understood that she was still under subpoena and that it was not necessary to re-
8 serve her. *Arendt Decl.*, para. 4.

9 While speaking to Mrs. Morris, Defendant’s counsel requested to speak to Plaintiff. *Arendt*
10 *Decl.*, para. 5. Mrs. Morris stated that he was unavailable. *Arendt Decl.*, para. 5. Counsel explained
11 to Mrs. Morris that October 7, 2011, was the discovery deadline and asked Mrs. Morris to have Plaintiff
12 either call counsel’s office, or come by the office so that we could prepare and have signed, a stipulation
13 to extend the discovery cutoff to allow for the deposition of Mrs. Morris. *Arendt Decl.*, para. 5. Mrs.
14 Morris stated she would relay this information to her husband. *Arendt Decl.*, para. 5.

15 As of the time of the preparation of this ex parte application (approximately 3:00 p.m., October
16 7, 2011), Plaintiff had not made any contact with Defendant’s counsel in this regard. *Arendt Decl.*, para.
17 6. Out of an abundance of caution, counsel decided to file this ex parte application. *Arendt Decl.*, para.
18 6.

19 Good cause exists to extend the non-expert discovery deadline to October 14, 2011, for the sole
20 purpose of deposing Mrs. Morris. *Arendt Decl.*, para. 7. Mrs. Morris was personally served with a
21 deposition subpoena, but due to illness was unable to appear. *Arendt Decl.*, para. 7. Mrs. Morris has
22 agreed to appear on October 10, 2011, for her deposition. *Arendt Decl.*, para. 7. Plaintiff has not voiced
23 any objection to this agreement with Mrs. Morris. *Arendt Decl.*, para. 7. Further, Plaintiff is not in any
24 way prejudiced by the extension of this deadline. *Arendt Decl.*, para. 4.

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Defendant respectfully requests that the non-expert discovery deadline for the sole purpose of

1 deposing Mrs. Morris be extended to October 14, 2011.

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DATED: October 7, 2011

WEAKLEY & ARENDT, LLP

By: /s/ James J. Arendt
James J. Arendt
Brande L. Gustafson
Attorneys for Defendant Christopher Long

ORDER

IT IS HEREBY ORDERED that the October 7, 2011, non-expert discovery deadline be continued to October 14, 2011, for the sole purpose of taking the deposition of Mrs. Michelle Morris.

IT IS SO ORDERED.

Dated: October 14, 2011

/s/ Michael J. Long
UNITED STATES MAGISTRATE JUDGE