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8 CHIEF JIM ZULIM and SGT. MCFADDEN

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

11	CHESTER S. GARBER, BETTY C. TING,	)	CASE NO. 1:09-cv-00242-AWI-SMS
12	EMILIA C. TING, M.D., EMILIA C. TING,	)	
13	M.D., INC., GARBER T. SERVICES CO.,	)	<b>STIPULATION TO WITHDRAW</b>
14	INC., AND GOLDEN VALLEY AERO,	)	<b>DEFENDANTS' MOTION TO DISMISS</b>
15	INC.,	)	<b>WITHOUT PREJUDICE SUBJECT TO RE-</b>
16	Plaintiffs,	)	<b>NOTICE; AND REQUEST TO VACATE</b>
17		)	<b>HEARING</b>
18	vs.	)	Date: May 4, 2009
19		)	Time: 1:30 p.m.
20	CITY OF CLOVIS; ABBY SPENCER, SGT.	)	Court: Two
21	McFADDEN; POLICE CHIEF JIM ZULIM	)	Honorable Anthony W. Ishii
22	in Their Individual and Official Capacities;	)	
23	and DOES 1-75, Inclusive,	)	
24	Defendants.	)	Complaint Filed: 02/05/09
25		)	

26 The parties herein, by and through their respective counsel, hereby enter the following  
27 stipulation:

28 Defendants withdraw their pending motion to dismiss filed on March 31, 2009 and  
scheduled to be heard on May 4, 2009. This withdrawal is without prejudice and subject to re-  
notice. (Court Docket No. 6)

While plaintiffs do not concede their government tort claim was filed late, Plaintiffs  
nevertheless intend on filing a petition with the City of Clovis to seek relief from late filing.  
Plaintiffs will file their petition with the City of Clovis no later than June 30, 2009. The City of  
Clovis has up to 45 days to consider that request. Within thirty (30) calendar days after the

1 petition is denied by affirmative rejection or by operation of law, plaintiffs will file a petition  
2 with this Court seeking relief from late filing; and will simultaneously file an amended  
3 complaint. If, however, the petition is granted by the City of Clovis, plaintiffs will then proceed  
4 by filing their amended complaint, also within thirty (30) days thereafter.

5 If no such amendment is filed by the thirtieth day after the decision is made by the City  
6 of Clovis on plaintiff's petition, defendants will re-notice a hearing on their motion as soon  
7 thereafter as the matter can be heard.

8 The parties further agree that the hearing on May 4, 2009 will be vacated.

9 **IT IS SO STIPULATED.**

10  
11 DATED: April 17, 2009

12 WEAKLEY, ARENDT & MCGUIRE, LLP

13 By: /s/ Erica M. Camarena  
14 Erica M. Camarena  
15 Attorneys for Defendants

16 DATED: April 17, 2009

17 THE LAW OFFICE OF JACOB M. WEISBERG

18 By: /s/ Jack M. Weisberg  
19 Jacob M. Weisberg  
20 Attorney for Plaintiffs

21 **ORDER**

22 The Court, having found good cause for the parties' stipulation to have defendants withdraw  
23 their pending motion to dismiss without prejudice and subject to re-notice, hereby GRANTS the  
24 parties' stipulation. The hearing currently set on May 4, 2009 at 1:30 p.m. in Courtroom Two, is  
25 hereby vacated.

26 IT IS SO ORDERED.

27 **Dated: April 20, 2009**

28 **/s/ Anthony W. Ishii**  
**CHIEF UNITED STATES DISTRICT JUDGE**