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Attorneys for Plaintiffs

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

11 MAUREEN ABSTON, individually, and as  
 12 Personal Representative of the Estate of  
 13 RICHARD ABSTON; COREY ABSTON;  
 14 JACY ABSTON; LINDA ABSTON

Case No. 1:09-CV-00511 OWW GSA

**STIPULATION AND ORDER DISMISSING  
 PLAINTIFFS' FIFTH CAUSE OF ACTION  
 WITH PREJUDICE AND MODIFYING  
 FIRST CAUSE OF ACTION**

Plaintiffs,

vs.

15 CITY OF MERCED, a municipal corporation;  
 16 RUSS THOMAS, in his capacity as Sheriff for  
 17 the CITY OF MERCED; J. HART, individually  
 18 and in his capacity as a police officer for CITY  
 19 OF MERCED; B. DALIA, individually, and in  
 20 his capacity as a police officer for the CITY OF  
 21 MERCED; N. ARELLANO, individually and  
 22 her capacity as a police officer for the CITY OF  
 23 MERCED; S. KENSEY, individually; and  
 24 DOES 1-25, inclusive,

Defendants.

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**STIPULATION**

WHEREAS, Plaintiffs have filed a First Amended Complaint in this action, pursuant to stipulation.

WHEREAS, the First Amended Complaint contains a cause of action for violation of California Civil Code section 52.1, in the Fifth Cause of Action.

1           WHEREAS, the parties stipulate to dismissal of the Fifth Cause of Action in Plaintiffs'  
2 First Amended Complaint, with prejudice, in its entirety as to all claims of violation of California  
3 Civil Code section 52.1.

4           WHEREAS, the First Cause of Action, paragraph 38(a), alleges a Fourth Amendment  
5 claim on behalf of all plaintiffs.

6           WHEREAS, the parties stipulate that a Fourth Amendment claim can be asserted only on  
7 behalf of Decedent RICHARD ABSTON, through the personal representative of his estate,  
8 MAUREEN ABSTON.  
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10           IT IS SO STIPULATED, that the Fifth Cause of Action of the First Amended Complaint  
11 should be dismissed with prejudice; and the First Cause of Action, paragraph 38 (a) should be  
12 amended to state a Fourth Amendment claim solely on behalf of Decedent RICHARD  
13 ABSTON, through the personal representative of his estate, MAUREEN ABSTON.  
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17 Dated: January 4, 2010

Respectfully submitted,

**The Law Offices of John L. Burris**

/s/ BENJAMIN NISENBAUM

Benjamin Nisenbaum

Attorney for Plaintiffs

Maureen Abston, Corey Abston; Jacy Abston;

Linda abston

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Dated: January 4, 2010

Respectfully submitted,  
EDMUND G. BROWN JR.  
Attorney General of California  
JAMES M. SCHIAVENZA  
Senior Assistant Attorney General

/s/ STEVEN M. GEVERCER  
STEVEN M. GEVERCER  
Supervising Deputy Attorney General  
*Attorneys for Defendant*  
*Shane Kensey*

Dated: January 4, 2010

Respectfully submitted,  
LOW BALL AND LYNCH

/s/ DALE ALLEN JR.  
DALE L. ALLEN, JR  
*Attorneys for Defendants*  
*City of Merced; Russ Thomas; J. Hart;*  
*B. Dalia and N. Arellano*

1 **ORDER**

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5 PURSUANT TO THE PARTIES' STIPULATIONS, Plaintiffs' Fifth Cause of Action

6 asserted in Plaintiffs' First Amended Complaint, alleging violation of California Civil Code section

7 52.1, is hereby dismissed with prejudice. The Court takes notice that the Fourth Amendment right to

8 be free from unreasonable searches and seizures asserted in Plaintiffs' First Cause of Action,

9 paragraph 38(a), of Plaintiffs' First Amended Complaint, is asserted solely on behalf of Decedent

10 RICHARD ABSTON, through the personal representative of his estate, MAUREEN ABSTON.

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12 **IT IS SO ORDERED.**

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14 Dated: January 15, 2010

15 /s/ OLIVER W. WANGER\_\_\_\_\_

16 Honorable Oliver W. Wanger

17 UNITED STATES DISTRICT JUDGE

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