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10 MAUREEN ABSTON, et al.
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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

vs.

CITY OF MERCED, a municipal
corporation; RUSS THOMAS, in his
capacity as Sheriff for the CITY OF
MERCED; J. HART, individually and in
his capacity as a police officer for CITY
OF MERCED; B. DALIA, individually, and
in his capacity as a police officer for the
CITY OF MERCED; N. ARELLANO,
individually and her capacity as a police
officer for the CITY OF MERCED; S.
KENSEY, individually; and DOES 1-25,
inclusive,

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

**STIPULATION AND ORDER TO CONTINUE
TRIAL DATE**

Pre-Trial Conference Date: 3/11/2011
Trial Date: 4/26/2011

1 Defendants.

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3 **STIPULATION**

4 WHEREAS, trial in this matter has been set to begin on April 26, 2011.

5 WHEREAS, Plaintiffs' counsel has a newly-arised potential conflict with the
6 April 26, 2011 case, described herein as follows and in the accompanying
7 Declaration of Benjamin Nisenbaum.

8 Plaintiffs' counsel represents Teresa Sheehan in a federal civil rights action
9 currently pending in U.S. District Court for the Northern District of California, *Teresa*
10 *Sheehan v. City and County of San Francisco, et al*, Case No. C 09 03889 CRB.
11 Trial in the *Sheehan* matter is currently set for November 29, 2010, before Judge
12 Charles R. Breyer. *Sheehan* involves a woman who was survived being shot several
13 times by San Francisco Police Department officers, while in her residence, following
14 a W&I section 5150 report of Ms. Sheehan threatening her social worker with a knife.
15 The likelihood of settlement in *Sheehan* is very low if not non-existent. Judge Breyer
16 set a short discovery calendar in that case (initial Case Management Conference was
17 February 26, 2010), due to the fact that the Plaintiff had been through a criminal trial
18 already. As discovery in *Sheehan* has progressed, two matters have arisen that
19 necessitate the *Sheehan* trial date being moved. Both matters are set forth in Exhibit
20 A to the accompanying Declaration of Benjamin Nisenbaum (the filed, but denied,
21 Joint Administrative Motion to Continue Trial Date and Modify Pre-Trial Conference
22 Order in *Sheehan*): One is that the period of discovery is simply too short. The other
23 matter is that Defense counsel for all defendants in that action, San Francisco Deputy
24 City Attorney Blake Loebs, will be out on paternity leave from October 11, 2010 to
25 January 11, 2010. Counsel in *Sheehan* submitted a stipulation to modify the Pre-
26 Trial Conference Order in *Sheehan* to accommodate both matters, requesting a trial
27

1 date in June 2011 (for Plaintiffs' counsel, this would follow the trial of the instant
2 action). However, Judge Breyer rejected the proposed modification.

3 Judge Breyer indicated to Defendants' attorney, Mr. Loebs, that he would
4 entertain a "more modest" continuance of the trial date, in light of Mr. Loebs' paternity
5 leave. See Exhibit B to the accompanying Declaration of Benjamin Nisenbaum, the
6 Declaration of Blake P. Loebs.

7 Thus, counsel for the parties in *Sheehan* have sought another trial date in
8 *Sheehan* less remote than June 2011. The only feasible time to try *Sheehan* is late
9 April 2011. It appears likely to counsel in *Sheehan* that Judge Breyer would
10 accommodate this more modest request. Moreover, Dale L. Allen, Jr., Esq., counsel
11 for the City of Merced defendants, has a three-week trial in San Joaquin County
12 starting on June 20, 2011, followed by a pre-planned vacation. Accordingly, the
13 schedules of the parties' respective trial counsel necessitate moving the trial in this
14 action to no sooner than August 22, 2011, dependant on this Court's calendar.

15 Counsel for the parties in this action have conferred, and are available for trial
16 of this action on or after August 22, 2011. No other dates previously set by the
17 Court should be affected by this requested continuance.

18 IT IS SO STIPULATED.

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20 Respectfully submitted,

21 Dated: June 7, 2010

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23 **The Law Offices of John L. Burris**
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28 /s/ Benjamin Nisenbaum
29 Benjamin Nisenbaum
30 Attorney for Plaintiffs

1 Dated: June 7, 2010

Respectfully submitted,

2 LOW BALL AND LYNCH

3 /s/
4 DALE L. ALLEN, JR.

5 *Attorneys for Defendants*
6 *City of Merced; Russ Thomas; J. Hart;*
7 *B. Dalia and N. Arellano*

8
9 **ORDER**

10 PURSUANT TO THE PARTIES' STIPULATION, the Court finds good
11 cause to continue the trial date in this action. The trial date of this action is hereby
12 continued to August 30, 2011 at 9:00 a.m. No other dates shall be affected by this
Order.

13 NO FURTHER CONTINUANCES.

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15 IT IS SO ORDERED.

16 Dated: June 21, 2010

17 /s/ Oliver W. Wanger
18 UNITED STATES DISTRICT JUDGE