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7
8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

10 SEAN PLYMALE,)	Case No. 1:09-CV-00802-LJO-MJS
11)	
12 Plaintiff,)	STIPULATION AND ORDER TO
13)	CONTINUE TRIAL AND DATES IN
14 v.)	SCHEDULING ORDER DATED
15)	FEBRUARY 4, 2010
16 CITY OF FRESNO; JERRY DYER,)	
ART ALVARADO, MARK J. SALAZAR;)	
and DOES 1 through 10, inclusive,)	
17)	
18 Defendants.)	

18 The parties, through their counsel of record, hereby stipulate as follows:

- 19 1. Plaintiff's remaining claim is for violation of 42 U.S.C. Section 1981
- 20 against three officers. The action emanates from a single incident ("Celdon Incident") in
- 21 which Plaintiff was one of the responding officers, and the investigation and disciplinary
- 22 action stemming from the incident;
- 23 2. On October 7, 2010, Plaintiff was indicted on criminal charges
- 24 relating to the Celdon incident;
- 25 3. Based upon the threatened criminal indictment and the indictment
- 26 itself, Plaintiff has asserted the Fifth Amendment in response to written and deposition
- 27 discovery, and has also requested a trial continuance;
- 28 4. The Parties request that a new trial date be set before the end of
- January, 2012;

1 5. The remaining discovery will be limited to those persons previously
2 noticed for deposition and three additional persons which either side may identify
3 hereafter, as well as supplemental written discovery to those responses to written
4 discovery to which the Fifth Amendment has been asserted. Any additional discovery
5 may be requested pursuant to a noticed motion if counsel cannot reach a resolution on
6 the issue;

7 6. Plaintiff will have until the end of 2010 to take the deposition of
8 Defendant Alvarado and to make a decision as to whether or not to dismiss him prior to
9 Defendant Alvarado's filing a summary judgment motion, and that Plaintiff cannot use
10 his assertion of the Fifth Amendment to continue and/or defeat the motion;

11 7. By stipulating to the continuance, the Defendants do not waive their
12 right to object to any further continuance; to assert evidentiary sanctions and/or
13 dismissal based upon Plaintiff's invocation of the Fifth Amendment; to claim prejudice
14 based on the delay caused by the criminal proceeding; and/or to claim Plaintiff has
15 waived his right to assert the Fifth Amendment privilege; and

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8. The Parties propose the following new dates:
- Discovery Deadline: September 16, 2011
 - Expert Discovery Deadline: September 30, 2011;
 - Non-Dispositive Motion Deadline: October 14, 2011;
 - Dispositive Motion Filing Deadline: October 26, 2011;
 - Pre-Trial Conference: December 15, 2011 at 8:30am;
 - Trial: January 23, 2012 at 8:30am.

EMERSON, CAREY, SORENSON, CHURCH & LIBKE

Dated: November 17, 2010

/s/ Rayma Church
Rayma Church, Esq.
Attorney for Plaintiff Sean Plymale

BETTS & RUBIN

Dated: November 17, 2010

/s/ Joseph D. Rubin
Joseph D. Rubin, Esq.
Attorney for Defendants Jerry Dyer, Art Alvarado, Mark M. Salazar

ORDER

The Court will provide an Amended Scheduling Order. The request is granted. Good cause exists on the issue of the 5th Amendment.

IT IS SO ORDERED.

Dated: November 17, 2010

/s/ Lawrence J. O'Neill

UNITED STATES DISTRICT JUDGE

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