

1 **OFFICE OF COUNTY COUNSEL**  
 2 **COUNTY OF KERN, STATE OF CALIFORNIA**  
 3 **By Andrew C. Thomson, Deputy (Bar # 149057)**  
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6 **Attorney for Defendants,**  
 7 **County of Kern, Kern County**  
 8 **Sheriff's Office, Otis Whinery,**  
 9 **Douglas Jauch, Edward Tucker**  
 10 **and Patrick Neal**

9 **UNITED STATES DISTRICT COURT**  
 10 **EASTERN DISTRICT OF CALIFORNIA**

11 **LATOYA MCKENZIE, an individual;**  
 12 **B.M., an individual; C.M., an**  
 13 **individual by and through her**  
 14 **Guardian Ad Litem Latoya**  
 15 **McKenzie; R.M., JR., an individual**  
 16 **by and through his Guardian Ad**  
 17 **Litem Latoya McKenzie; Z.P., an**  
 18 **individual by and through her**  
 19 **Guardian Ad Litem Latoya**  
 20 **McKenzie; A.M. an individual by**  
 21 **and through her Guardian Ad Litem**  
 22 **Brittney Shelby; Z.H. and individual**  
 23 **by and through her Guardian Ad**  
 24 **Litem Denise Harris; J.J. an**  
 25 **individual by and through his**  
 26 **Guardian Ad Litem Monica Joiner;**

20 **Plaintiffs,**

21 **v.**

22 **KERN COUNTY; KERN COUNTY**  
 23 **SHERIFF'S DEPARTMENT; OTIS**  
 24 **WHINERY; DOUGLAS JAUCH;**  
 25 **EDWARD TUCKER; PATRICK**  
 26 **NEAL; AND DOES 1-200**  
 27 **INCLUSIVE,**

25 **Defendants.**

**Case No. 1:09-CV-01658-AWI-BAK GSA**  
  
**STIPULATION OF THE PARTIES**  
**REGARDING THE FILING OF A**  
**RESPONSIVE PLEADING TO THE FIRST**  
**AMENDED COMPLAINT**

27 **///**  
 28 **///**

1           **COME NOW**, the Parties herein, by and through their respective counsel of record,  
2 Tyler R. Dowdall, Esq., SAYRE & LEVITT, for Plaintiffs LaToya McKenzie, B.M., C.M.,  
3 R.M., Jr., Z.P., A.M., Z.H., and J.J. (hereinafter collectively "Plaintiffs"), and Andrew C.  
4 Thomson, Deputy, Office of Kern County Counsel, for Defendants County of Kern, Kern  
5 County Sheriff's Office erroneously sued herein as the Kern County Sheriff's Department,  
6 Otis Whinery, Douglas Jauch, Edward Tucker and Patrick Neal (hereinafter collectively  
7 "Defendants") and, with the authority of their respective clients, agree as follows:

8       1.       The Parties have repeatedly met and conferred regarding various issues regarding  
9 the Complaint and the FAC. Pursuant to agreement, Plaintiffs filed a First Amended  
10 Complaint (FAC) on December 1, 2009 (Docket Document No. 39). However, the FAC  
11 does not include the required affidavits regarding the heirs, representatives and successors  
12 in interest required under Cal. Code Civ. Pro. § 377.60.

13       2.       Counsel for Plaintiffs has stated that the affidavits will be filed as the documents are  
14 returned to counsel's office. Since some of the Plaintiffs, and/or their representatives  
15 and/or Guardians, live out-of-state, the filing of all of the affidavits will not occur within ten  
16 days of the filing of the FAC, the deadline for the filing of County Defendants' responsive  
17 pleading.

18       3.       County Defendants believe that in the absence of the required affidavits which will  
19 verifying standing, and address other issues, regarding the numerous Plaintiffs, a 12(b)(6)  
20 Motion to Dismiss would need to be filed in response to Plaintiffs' FAC.

21       4.       Based upon Plaintiffs representations, County Defendants believe that a 12(b)(6)  
22 Motion to Dismiss may be unnecessary once the affidavits are filed. The Parties are in  
23 agreement that, if possible, it would be beneficial to all involved to avoid the cost and time  
24 associated with the preparation of a 12(b)(6) Motion, the Opposition, the Reply and a  
25 hearing on the motion.

26       5.       Counsel for County Defendants has planned to be absent from the office between  
27 December 19, 2009 and January 3, 2010.

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**IT IS HEREBY STIPULATED:**

County Defendants need not file a Responsive Pleading to the FAC at the present time; Plaintiffs' Counsel will notify County Defendants' Counsel when the final affidavit is filed; and, within twenty (20) days after the filing of the final affidavit, but no sooner than January 8, 2010, County Defendants will be required to file a responsive pleading.

Dated: December 8, 2009

**SAYRE & LEVITT**

By  / s / Tyler R. Dowdall  
Tyler R. Dowdall, Esq.  
Attorneys for Plaintiffs LaToya McKenzie,  
B.M., C.M., R.M., Jr., Z.P., A.M., Z.H., J.J.

Dated: December 8, 2009

**OFFICE OF COUNTY COUNSEL**

By  / s / Andrew C. Thomson  
Andrew C. Thomson, Deputy  
Attorneys for Defendants County of Kern, Kern  
County Sheriff's Office, Otis Whinery, Douglas  
Jauch, Edward Tucker and Patrick Neal

**ORDER**

The parties having stipulated thereto and good cause appearing therefor,

IT IS SO ORDERED.

Dated: December 10, 2009

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE